
(2012) 05 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14023 of 2011

Ajay Kumar and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243U, 243U(3)
Haryana Municipal Corporation Act, 1994 — Section 3
Punjab Municipal Corporation Act, 1976 — Section 13, 2, 3, 3(1), 3(1)

Citation : (2012) 3 RCR(Civil) 135

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : R.S. Rai, with Mr. Aashish Chopra and Mr. H.S. Sethi, Dr. Anmol Rattan Sidhu, with Mr. H.S. Sethi, Mr. Kanlwaljit Singh, with Mr. IPS Mangat, for the Appellant; Amol Rattan Singh, Addl. AG, Punjab assisted by Mr. Daman Dhir, Advocate, Mr. Arun K. Bakshi, Advocate for the Respondent No. 2 in CWP No. 14024 of 2011, Mr. K.S. Dadwal, Advocate for the Respondent No. 4 and Mr. Puneet Gupta Advocate for the Intervenors, for the Respondent

Judgement

Ajay Tewari, J.—The aforesaid three writ petitions bearing CWP Nos. 14023, 14024 and 21850 of 2011 have been filed under Articles 226 / 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari in each of them for quashing certain Government Notifications and they all are being disposed of by this common order as common questions of law and facts are involved therein. In CWP No. 14023 of 2011 challenge is to the notification dated 26.7.2011 vide which the area of Municipal Council Pathankot has been declared as an urban area u/s 3(1) of the Punjab Municipal Corporation Act, 1976, on the recommendation of respondent No. 2, and further vide the same notification the Municipal Council, Pathankot has been dissolved and Municipal Corporation, Pathankot has been created for the larger urban area not fulfilling the criteria set by the Government by itself as far back as in 1999, has been sought to be quashed.

2. The grievance of the petitioners in the present writ petition is that the Government of Punjab under the pressure of respondents No. 3 and 4 has done the aforesaid act of dissolution of the Municipal Council and declaring the said area as a larger urban area without any application of mind and ignoring the criteria fixed by the Government itself on 16.7.99, as stated above. The Municipal Council, Pathankot has been in existence for the last many years having an area of about 4-5 kilometers radius and a total population of 156000 which has been divided into 33 wards. There are only 90000 voters in the whole of the aforesaid Council. The villages are not the part of the said Council. The budget of the said Council for the year 2011 was Rs. 30 crores approximately which is yet to be approved by the Department of local Government. The State Government had issued instructions in February, 2011 giving guidelines with regard to preparation of budget as per which not more than 25% of the total budget could be spent on the establishment but at present more than 50% of the budget is being spent on establishment only and with the creation of Municipal Corporation another Rs. 5 crores will have to be spent on establishment itself thereby making the total budget for the same to be 60-65%. The relevant part of the aforesaid guidelines (Annexure P-1) clearly mention where the income is Rs. 2 crores, only 25% can be spent on establishment and where the budget is more than Rs. 10 crores only 20% can be so spent.

3. It is further mentioned that last elections to the Municipal Council, Pathankot were held in June, 2008 and petitioners No. 1 to 12 and 14 were elected as Municipal Councilors and u/s 13 of the Punjab Municipal Act, 1911, the term of a Municipal Council is 5 years and, therefore, the term of the present Council was to end in June, 2013 As per notification dated 16.7.99(Annexure P-2) the Municipal Corporation should have population above 3 lacs. There has to be a proposal with regard to the up-gradation of any Municipal Council which has to be routed through the Deputy Director for the consideration of the Government. Similarly the income of the Municipal Council for the up-gradation for Class I Municipal Council should be crores or more. If the said income was Rs. 2 Crores in 1999, the same has to be much more than that if the same was to be upgraded. It is further averred that out of 33, 22 Councilors belong to the Congress Party. Respondent No. 3 is the Minister in the present Government in-charge of the local bodies and respondent No. 4 is the State President of the ruling party and is interested in contesting the elections scheduled to be held in the next few months. Only due to the political reasons the aforesaid act of dissolving the Municipal Council, Pathankot has been done which has no justification at all.

4. It is further the case of the petitioners that Deputy Commissioner of Gurdaspur, having no role to play, on his own has written a letter on 20th July, 2011 to the Government recommending the up gradation of the Municipal Council, Pathankot to that of Municipal Corporation whereas there was no data with the Government as to whether the said Council fulfils the criteria for being upgraded as a Corporation or not. The State Government on 11.7.2011

(Annexure P-3) wrote a letter to the Municipal Council, Pathankot with regard to the proposal of up gradation of the Municipal Council to that of a Corporation which was received by the Municipal Council vide diary no. 275 on 21.7.2011 which clearly shows that the Government sent the case to the Municipal Council, Pathankot only on 21.7.2011 and before the Municipal Council could respond thereto, the Deputy Chief Minister on 23.7.2011 announced the formation of Municipal Corporation, Pathankot. Even on 21.7.2011 the State Government did not have the information regarding the facts and figures as to whether the Municipal Council, Pathankot fulfils the criteria for being upgraded as a Corporation. It is further averred that now in a totally illegal and arbitrary manner, the same area which was there for the Municipal Council, Pathankot, has been declared as a larger urban area u/s 3(1) of the Punjab Municipal Corporation Act, 1976 and on the same day Municipal Corporation, Pathankot has been constituted u/s 4 read with Section 3 of the said Act. Copies of the two notifications dated 26.7.2011 are Annexures P-4 and P-5.

5. It has been further averred that a resolution (Annexure P-3/A) was passed by Municipal Council, Pathankot wherein it was decided that there was no need of a Municipal Corporation. 22 municipal councilors had attended the said meeting which was confirmed by them on 16.2.2011. The said resolution was sent to the Government and no objection was raised thereto. It is alleged that this whole scenario has changed with the respondent No. 3 taking over as a Minister of Local Bodies and respondent No. 4 is very close to him and these actions have been taken immediately without any justification of creating a Municipal Corporation. Hence this petition.

6. In reply filed by respondents No. 1 and 3, preliminary submissions taken are that the petitioners have mislead this Court because Annexure P-2 dated 16.7.99 is merely an intra departmental letter and not a notification issued under any provision of law or the rules. The letter only relates to the classification of Municipal Council as Municipal Council Class-I, II, III and Nagar Panchayat as provided under Sub Section 2 of Section 4 of the Punjab Municipal Act, 1911 and has no relevance what so ever with the declaration of any area as larger urban area u/s 3 of the said Act. The Punjab Municipal Corporation Act, 1976 and The Punjab Municipal Act, 1911 are two different and distinct Acts. It is also pleaded that Government Notifications Annexures P-4 and P-5 have been issued in consideration and compliance of the facts enumerated u/s 3 of the Punjab Municipal Corporation Act.

7. It is further submitted that the Government has upgraded the Municipal Council, Patiala and Municipal Council, Bhatinda in the year 1997 and 2003 respectively when the population of both these towns was much less than three lacs. It is further averred that no consent, approval or consultation by Government with Municipal Council is required before declaring any Municipal Council area as Municipal Corporation u/s 3 of the Punjab Municipal Corporation Act, 1976. The averment of the petitioners that by curtailing the tenure of five

years of the Municipal Council is in violation of Article 243U of the Constitution is denied as being incorrect stating that Article 243U of the Constitution of India clearly mentions that the terms of 5 years is subject to its dissolution under the law and, therefore, the dissolution of the Municipal Council is in pursuance of a lawful action and hence there is no violation of the Article 243U of the Constitution of India. It is further stated that by issuing notifications Annexures P-4 and P-5 the Government has discharged its legislative function. It is also denied that notifications Annexure P-4 and P-5 have been issued in gross violation of the parameters fixed in the notification dated 16.07.99 (Annexure P-2), which according to the answering respondents is neither a notification nor it in any manner relates to Section 3 of the Punjab Municipal Corporation Act, 1976 which empowers the Government to declare any area as larger urban area. On merits, it is submitted that no right is accrued to the petitioners to invoke the extra ordinary jurisdiction of this Court because the impugned notifications Annexures P-4 and P-5 are legal and valid and that no ground is available to them to approach this Court. It is submitted that the Municipal area is 22.10 square kilometers and further that the annual budget of Municipal Council, Pathankot for the year 2011-12 was Rs. 30 Crore. It is submitted that on the constitution of Municipal Corporation Pathankot the revenue shall also increase considerably in the form of collection of taxes on land and buildings, licence fee, land use change fee, building fee etc. because the business and trading community always set up or expand their units in the town/area where improved civic facilities are available. The main purpose of enacting The Punjab Municipal Corporation Act, 1976 is for improving the civic facilities in an area and on constitution of Municipal Corporation Pathankot better and improved civic amenities shall be provided resulting into an increase in the collection of revenue also. Moreover Pathankot town is gateway to the States of Himachal Pradesh and Jammu and Kashmir and road and rail linkages to all other towns in the country are available. This city is a known tourist destination. Therefore, there shall be no paucity of funds and the Corporation shall be able to provide improved civic infrastructure in the town. Other averments were denied as being incorrect.

8. In CWP No. 14024 of 2011 the same notifications dated 26.7.2011 (Annexure P-5 and P-6 in this case) have been challenged whereby the area of Municipal Council, Phagwara has been declared as a larger area and the same has been dissolved and Municipal Corporation, Phagwara has been created. Almost similar averments have been taken as have been taken in the case of Municipal Council, Pathankot. But here in this case it has been submitted that the area of the Municipal Council, Phagwara is 8 kilometers radius and its population is 98000. Number of wards is 27 and there are only 63000 voters. It is also submitted that the total population of Phagwara, even outside the Municipal Limits is only 1,43,000 which comprises of 102 villages. The total budget of the Municipal Council, Phagwara for the year 2011 approved by the respondents on 30.6.2011 is of 19 crores out of which 9 crores is on the salary for the employees only. The copy of the budget for the year 2011 is attached as Annexure P-2. The

notification dated 16.7.99 is attached as Annexure P-3.

9. Reply to this petition has been filed on behalf of respondent No. 1 and almost similar pleas have been taken as in CWP No. 14023 of 2011 as mentioned above.

10. CWP No. 21850 of 2011 has been filed by the petitioners for issuance of a writ of certiorari for quashing notification dated 07.01.2011 (Annexure P-7) and notification dated 10.01.2011 (Annexure P-8) vide which the area of Municipal Council, SAS Nagar, Mohali has been specified to be a larger area and thereby constituting the larger urban area as Municipal corporation, SAS Nagar, Mohali which is totally against the criteria set up by the Government and has been done without application of mind. The Municipal Council, SAS Nagar, Mohali has 31 wards and as per the latest census of 2011 as surveyed by the Executive Officer of the said Council vide letter dated 29.08.2011 (Annexure P-1), even if the area falling outside the Municipal limits is counted, its population is just about 1,64,000. Some of the Municipal Councilors had been requesting the Government to upgrade the Municipal Council, SAS Nagar, Mohali but the Municipal Corporation should include the area of Zirakpur, Behlolpur, village Daon etc. Copy of the agenda item and the approval given by the Municipal Councilors, SAS Nagar in its meeting dated 06.10.2010 is annexed as Annexure P-2. For the year 2010-11, the budget estimate was Rs. 4150 lacs and the income was Rs. 3707 lacs. Now for the year 2011-12 the income has been projected as Rs. 4076 lacs and the expenses of Rs. 4531.55 lacs leaving huge margin and requesting the State Government to help out the Municipal Council. Letter dated 16.08.2003 (Annexure P-3) written by the Deputy Controller (F & A) shows that the Municipal Council does not even meet the requirement of finance and is in deficit and the GMADA has given fund of Rs. 432.13 lacs to overcome the said deficit which is also clear from letter Annexure P-4. It is also averred that after excluding Zirakpur the total population comes to about 1.43 lacs and the total budget is approximately Rs. 40.00 crores which is not sufficient to meet its expenses and by making it a corporation the expenses would rather increase up by another Rs. 5.00/7.00 crores. Other pleas taken are almost identical to the one taken in CWP No. 14023 of 2011.

11. It must be noticed that each of the petitioners in the aforesaid three writ petitions are elected members of the local bodies.

12. In reply filed on behalf of respondents No. 1 to 3 to CWP No. 21850 of 2011, almost identical pleas have been taken as in CWP No. 14023 of 2011.

13. Section 3 of the Punjab Municipal Corporation Act deals with this issue and reads as follows:

Specification of an area to be a larger Urban Area and constitution of Corporation therefor: The Government may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in nonagricultural activities, the economic importance or such other factors, as it may deem fit, specify, by notification, in

the official gazette, any area to be a larger urban area for the purposes of this Act.

14. Vide letter dated 16.7.99 the Punjab Government issued certain guidelines. It would also be appropriate to reproduce the said letter in its entirety :-

Subject: Classification of Municipal Councils/Nagar Panchayats in the State.

In supersession of the Punjab government instructions issued vide letter No. DLG (MSC) 86/4464-86 dated 6.6.1986 the Government after careful consideration have now decided that the following scale of income and population for the classification of Municipal Councils/Nagar Panchayats in the State may be adopted :-

(A) Scale of income

Class of M.Cs/N.Ps

Income range (actual)

Class III/N.P.

Upto 1 Crore

Class II/N.P.

Between Rs. 1 Crore to Rs. 2 Crores

Class I

Rs. 2 Crores or more

(B) Scale of population

Nagar Panchayat

Below 15,000

Class III M.C.

15000 to 25000

Class II M.C.

25000 to 50000

Class I M.C.

50000 to 3 lacs

Municipal Corporation

Above 3 lacs

2. It is, however, clarified that in calculating the figures of income for the financial year, the amount of loan grants and income from sale of land (and other

property) reception of investments shall not be included. It is also clarified that share of state taxes received by the municipality shall also not be included in calculating the figures of income for financial year.

3. The Executive Officer shall give a certificate of income in the form appended to this letter. The proposal for upgrading or down grading of the Municipalities and Nagar Panchayats will be routed to the Government through the Regional Deputy Directors concerned who before forwarding the proposal to the Government shall verify that figures of income furnished in the certificate are correct and shall countersign the certificate furnished by the Executive Officer in token of its correctness for issuing the notification under the Sub-section 8 of Section 4 of the Punjab Municipal Act, 1911.

4. Government feels that upgrading or down grading wherever necessary may be notified expeditiously. The Municipalities/Nagar Panchayats which have become entitled to be categorized into higher class or lower class shall pass resolutions to that effect within a month of the receipt of this letter and forwarded proposals to the Regional deputy Directors, Local Government concerned for onward transmission to the State Government.

5. There may be Municipal Councils/Nagar Panchayats which may not require reclassification as a result of the income criteria and population prescribed above. Such Municipal Councils/Nagar Panchayats should intimate their figures of actual income for the financial year and population etc. as stated above.

Sd/-

Deputy Director

Local Government

15. It is argued that a perusal of Section 3 and the guidelines reveal that rational criterion have been evolved to guide the exercise of declaration and notification of an urban area into a Municipal Corporation. It has been further argued that after the Punjab Municipal Corporation Act was enacted, the Haryana Municipal Corporation Act 1994 was also enacted, Section 3 of which is as follows :-

3. Declaration of Municipal Area as Corporation. - (1) From the 31st day of May 1994, the Municipal Corporation of Faridabad shall be deemed to have been declared as such for the Municipal Area specified in the First Schedule appended to this Act.

(2) The Government may from time to time, by notification, in the Official Gazette, declare any municipality including area comprising rural area or a part thereof, if any, to be a Corporation known as "the Municipal Corporation of _____(Name of Corporation):

Provided that no municipality including area, comprising rural area of a part therefrom if any, shall be so declared to be a Corporation unless the population thereof is three lacs or more.

(3)...

(4)...

(5)...

16. It was only after the State of Punjab became aware of the Haryana enactment and was convinced by the rationale expressed therein that the instant guidelines which interestingly mention the same criteria were issued.

17. The first argument raised by learned counsel for the petitioners is that security of tenure is now a constitutional mandate under Article 243U of the Constitution and by the impugned notification the tenure of the elected representatives of the municipal body has been illegally curtailed.

18. This argument has been repelled by learned counsel for the respondents. Reliance has been placed on The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, wherein it was held as follows :-

21. Having heard the learned counsel for the parties at length on this aspect, we are of the opinion that the hiatus is an unavoidable event which must take place in the process of conversion of a Municipal Council into a Municipal Corporation. Reliance on Article 243U by the learned counsel for the respondents in this context is misconceived. The use of the expression "a Municipality" in sub-article (3) of Article 243U in the context and in the setting in which it is employees suggests and means the duration of the same type of Municipality coming to an end and the same type of successor Municipality taking over as a consequence of the terms of the previous Municipality coming to an end. Article 243U cannot be applied to a case where the area of one description is converted into an area of another description and one description of a Municipality is ceased by constituting another Municipality of a better description. Article 243U(3) cannot be pressed into service to base a submission on that an election to constitute a Municipal Corporation is required to be completed before the expiry of duration of a Municipal Council.

22. The constitution of Municipal Corporation would require notification of larger urban area and Municipal Corporation to govern it. The area shall have to be divided into wards with the number of corporators specified and reservations made. The Corporation would need to nominate Councilors. The territorial limits may need to be altered. The State Election Commission cannot conduct election without specifying numbers and boundaries of wards. New rules, bye-laws etc. shall need to be framed and municipal tax structure may need to be recast. The statutory provisions do not contemplate a situation where the same area may be called smaller and large area simultaneously and process of constitution of a Municipal Corporation being commenced and completed though the Municipal Council continues to exist. Such an action would result in anomaly and confusion if not chaos.....

19. In view of this authoritative pronouncement it has to be held that there is no

illegal curtailment of the tenure of the petitioners. As an adjunct to this finding it has to be further held that no cause of action arose to the petitioners and, therefore, none of the petitioners has any personal locus to challenge the action. This finding, however, could not be taken to the extent of holding that these writ petitions are not maintainable because in any case the right of the petitioners to challenge the action in public interest (if not in personal interest) cannot be denied. However, in that capacity they can succeed only if they are able to establish that the impugned action is so patently arbitrary or blatantly unconstitutional that it shocks the conscience of the Court.

20. Learned counsel for the petitioners have further argued that no hearing was provided to the petitioners or indeed any other member of the public before taking this decision. They have placed reliance on M/s. Vee Kay Oils Pvt. Ltd. v. State of Punjab through its Chief Secretary, Civil Secretary, Chandigarh and others, 1994(3) RRR 196 wherein a Division Bench of this Court held as follows :-

8. After hearing learned counsel for the parties, we are of the view that the writ petition deserves to be allowed on the short ground that the name of village Akbarpura does not find mention either in the preliminary notification or in the final notification issued by the government and in the absence of the same, it is difficult to accept the stand of the respondents that khasra Nos. 470, 471 and 472 onwards, in fact, pertain to village Akbarpura and not to village Jagera and Jandali Khurd. In fact, the respondents have been complacent in not advertng to the specific averments made by the petitioner vide notice of caveat dated 23.8.89 in which it was specifically mentioned that though preliminary notification issued does not relate to village Akbarpura, yet the petitioner apprehends that in case a notification is issued including the area owned or possessed by the petitioner and situate within the revenue estate of village Akbarpura, the same would affect his financial and proprietary rights. For this, the petitioner craved the right of hearing before issuance of a notification. There is no denying the fact that despite notice of caveat issued by the petitioner, no opportunity was afforded to him by the respondents. It is only on 15.4.93 (Annexure P-1) that the Executive Officer, Municipal Committee, Ahmedgarh, informed the petitioner that his mill now falls within the municipal limits of Ahmedgarh which notice has been termed to be wholly illegal and unjust by the petitioner.

9. Admittedly, there has not been any publication in the local area comprising revenue estate of village Akbarpura and so the petitioner could not raise any objection to the notification. Similarly, gram panchayat in the village was not informed of the same nor any representative of the inhabitants of village Akbarpura have been included on the committee of the municipality. Though this precise objection is not available to the petitioner, but all the same this gives an indication that there is no publication of this notification in the local area of village Akbarpura. There is no clear cut provision in the Act to provide a right of hearing to the residents of the locality before such an area is included within the

municipal limits. All the affected parties are entitled to hearing as the same is likely to involve civil consequences.?.....

21. They have also relied upon *Kamaljeet Singh v. State of Punjab* through Principal Secretary to Government of Punjab, Local Government Department, reported as 2002(3) RCR 438 wherein a Division Bench of this Court held as follows :-

4. The petitioners have challenged the denotification of Nagar Panchayat, Badhni Kalan on the following grounds :-

(a) The State Government does not have the jurisdiction, power or authority to denotify the Nagar Panchayat constituted under the Act.

(b) The decision to denotify the Nagar Panchayat, Badhni Kalan is arbitrary and tainted by mala fides and is also vitiated due to violation of rule of Audi alteram partem.

10. In *Baldev Singh's* case (supra), their Lordships of the Supreme Court interpreted Section 256 of Himachal Pradesh Municipal Act, 1968 which is pari materia to Section 4 of the Act and held as under :-

Citizens of India have a right to decide, what should be the nature of their society in which they live-agrarian, semi urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances, it is necessary that people who will be affected by the change should be given an opportunity of being heard. Otherwise they could be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like.

It is true that S. 256 does not in clear terms provide a right of hearing but the settled position of law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice the rules of natural justice would apply. Therefore, before the notified area is constituted in terms of S. 256, the people of the locality should be afforded an opportunity of being heard and the administrative decision by the State Government should be taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. However, the hearing contemplated need not be oral and can be by inviting objections and disposing them of in a fair way.

22. As against the aforesaid argument learned counsel for the respondents has placed reliance on *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, , wherein their Lordships held as follows :-

27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of

the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified u/s 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

28. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers u/s 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law.

23. Reliance has also been placed upon Bhupinder Singh and others v. Union of India and others reported as 1997(3) PLR 335 wherein it was held as follows :-

8. It is well established that legislative function in laying the policy or the act of enacting a law is primarily an act of Parliament or a Legislative Assembly through the process of which different types of laws are made for the public to conduct their affairs in conformity with the Constitution. Legislation is quite essential for the rule of law to prevail in the society. The legislative functions involve enactment of laws determining the structure, powers and the public authorities regulating the conduct of a person or persons. The Constitution of India vests the power of legislation in Parliament or Legislative Assembly.

10. As consistently and precedently accepted in innumerable judicial pronouncements leaving to the administration or the executive the question as to when and under which conditions the law shall apply, which undoubtedly is a legislative act, gives rise to what is known as "Constitutional Legislation", which is being equated with the concept of delegated legislation. While dealing with the question whether the principle of natural justice would apply to such a conditional or delegated legislation, it was observed that establishment of a Corporation under the Act is a legislative process indeed and thus is not subject to the principle of natural justice. The Court could only examine whether the statutory provisions have been complied with and would not say any more. It was observed that it is not the format which is important but the nature, which is in fact, plainly legislative.

17. In view of the observations and the authoritative pronouncements referred to above an consistently and precedently accepted norms, we are of the considered view that providing for and authorising the administration for declaration of the area to be the Municipal Area, that too as a one-time act, by no stretch of reasoning or logic, can be said to be an administrative act. We are of the considered view that it is a legislative act, at the most, in legal phraseology, it can be termed a conditional legislation, which, with the passage of time, has come to be accepted as a delegated legislation. There is no dispute that legislature can constitute Corporation. Which in fact has been done in the facts and circumstances of the present case. Only function left to be delegated was to prescribe the territorial area of the corporation which in our view, is a sequel to a natural corollary of the legislative act constituting a corporation, which was delegated to the designated administrative agency to carry out the object of the Act.

21. Learned counsel for appellant argued that the principles of natural justice are inherent though it may not be specifically indicated in Section 3 of the Corporation Act, especially when the civil rights of the citizens are being adversely affected because of their being residents of the Corporation. Certain liabilities are fixed on the citizens by solely coming into force of the Act. Thus, the basic question raised by the learned counsel is whether an opportunity of hearing should have been granted to the gram panchayats which have ceased and whose proprietary rights have been adversely affected, and also to the citizens living within territorial jurisdiction of the Corporation as certain liabilities also fall on them under the Act, for example, loss of voice in Gram Panchayats, imposition of urban way of life, high incidence of tax etc. In order to support his submission, learned counsel for the appellant relied repeatedly on Baldev Singh's case (supra). Learned counsel for the respondents refuted the submissions made by learned counsel for the appellant and urged that in view of function of constituting a corporation being legislative process, the principles of natural justice cannot be applied. Leaned counsel for the respondents relied on Tulsipur Sugar Co. Ltd.'s case (supra).

23. Similarly, the Hon''ble Supreme Court in Tulsipur Sugar Co. Ltd.'s case (supra) observed that before declaring any area to be town, village or suburb, etc. for the purpose of U.P. Town Act, in the absence of provisions of considering objections, neither the provisions can be struck down nor the opportunity of hearing or considering of objections can be read into it. While dealing with the principles of natural justice the Hon''ble Supreme Court observed that it is the nature of function of the State which are performed which is relevant in the legislative functioning. It is in the context of this that it was observed that the principles of natural justice have got a secondary role or a factor to be considered where action is directed against a person in the society as a whole. No provision for not providing hearing can be declared unconstitutional. Reference may be made to Union of India (UOI) Vs. Col. J.N. Sinha and Another,

24. In view of the judgment of the Hon'ble Supreme Court in the case of Sundarjas Kanya Lal Bhatija's (supra) and that of this Court in Bhupinder Singh's case (supra) it is held that declaration of an urban area as a municipal corporation is an exercise of legislative function and the argument that hearing was not granted will not nullify the same.

25. The next point argued by learned counsel for the petitioners is that apart from the statutory aspect a perusal of these Notifications reveal the most crass political cynicism and opportunism where perverse process of consideration is brought to bear and the criteria are actually overturned. He points out that in the present cases the Government first sought a report from the Municipal committee in respect of the parameters mentioned in the criteria which was received by the Municipal Committee on 21.7.2011. However, without even waiting for the report the announcement was made on 23.7.2011 and the declaration on 26.7.2011. Apart from that as per the file noting the competent authority approved the recommendation of the Deputy Commissioner. However, the final notification deals only with a truncated portion of the entire recommendation. As per learned counsel the Deputy Commissioner was well aware that the existing Municipal Council would not meet the tests of being declared as a Municipal Corporation and, therefore, had recommended the inclusion of villages but since that did not suit the political agenda and since the whole exercise was in any case merely a political stunt with no reference to the ground realities the villages with the inclusion of which at least some partial satisfaction of the criteria would have been possible were excluded.

26. Learned counsel for the petitioners have further argued that if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. In support of his argument he has placed reliance on The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, , the relevant paras of which are as under :-

26. The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out command having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, ; Chandrika Jha Vs. State of Bihar and Others, Tarlochan Dev Sharma Vs. State of Punjab and Others, and Manohar Lal (D) by L.Rs. v. Ugrasen (D) by L.Rs. & Ors., 2011(7) R.C.R. (Civil) 841: 2011(1) Recent Apex

Judgments (R.A.J.) 307: AIR 2010 SC 2210).

27. Similar view has been re-iterated by this Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, ; *Bahadursinh Lakhubhai Gohil v. Jag-dishbhai M. Kamalia & Ors.*, 2004(1) R.C.R. (Civil) 503 : AIR 2004 SC 1159; and *Pancham Chand and Others Vs. State of Himachal Pradesh and Others*, observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the Constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

27. The argument regarding political opportunism or the financial conditions of the municipal councils or that the final notification accepted only the truncated recommendation have to be viewed against the prism of legislative competence.

28. It is not for this Court to substitute its own views or to sit in appeal. The Court cannot say that a certain action should not be done because it is not politically prudent or that it is impermissible for the competent authority to disregard part of a recommendation. The argument based on the judgment in *Joint Action Committee's case* (supra) would not be applicable because in that case the issue was of the exercise of an administrative function on the basis of the discretion vested in an executive authority and not a case where a legislative function has been exercised as in the present. It is also not the province of a Court to set aside a legislative action merely because it is politically opportune. Political actions have to be resisted politically. In a democracy it is only the people who can reward or punish a political action and that too at the hustings.

29. Learned counsel for the petitioners have also argued that mandate of Section 3 cannot be ignored. As per them a bare reading of the said Section makes it very clear that for declaring an area to be Urban area and further to make it a Corporation the population of the area, the density of population, the revenue generated for local administration and the percentage of population engaged in non-agricultural activities etc. are certain specifics which are to be considered but these factors have not been taken into consideration while making Municipal Council/s as Municipal Corporation/s.

30. It has next been argued that the guidelines (Annexure P-1) issued by the Government itself speak of the scale of income and of population etc. for the classification of Municipal Councils but while declaring the Municipal Councils as Municipal Corporation these guidelines have been completely ignored. With regard to the binding nature of guidelines/instructions reliance has been placed on *State of Maharashtra and another, A.W. Dhope and others v. Sanjay Thakre and others*, reported as 1995(3) S.C.T. 313; 1995 Supp (2) Supreme Court

Cases 407 wherein a Division Bench of the Hon''ble Supreme Court held as follows :-

7. The contention of Shri Bhandare that the provisions concerned are executive instructions, having no statutory force because of which the State could deviate from the ratio, lacks force and deserves to be rejected. Apart from the fact that it was not factually pleaded and contested before the Tribunal, the State having laid down the ratio, even though the same be by way of executive instructions it does not really lie in the mouth of the State to contend that the instructions having no statutory force could be deviated.

31. Further reliance has been placed on K.G. Nanchahal v. State of Punjab, reported as 2002(1) SCT 485 wherein a Division Bench of this Court held as follows :-

28 The State again had complete freedom to issue instructions or guide-lines for giving proper effect to the rules of the present kind. But once it issues instructions and guidelines, the State is duty bound to strictly adhere to such instructions. It must substantially comply with such instructions if strict adherence thereto is not possible for unavoidable circumstances. A Division Bench of this Court in the case of Chander Bhan Arya v. Secretary to Government, Haryana, 1997(3) Recent Services Judgments 626, held as under :-

There could hardly be any dispute to the legal proposition of law that a Government servant cannot as a matter of right claim continuity in service upon attaining the age of 55 years. The Government has a discretion to take appropriate decision at this stage whether a government servant should be permitted to continue in service or should be retired prematurely in public interest. But such decision must meet its ultimate object on permissible basis the object being public interest and basis being service record of the employee, considered in its right perspective in a just and fair manner so as to avoid arbitrariness or mala fide in its decision and ensuring as well that such action is no termed as a colourable exercise of power. When government issues instructions then such instructions have to be treated as guide-lines for the competent authorities and which must be kept in mind and adhered to while taking such decisions. Reference in this regard can be made to the judgment of Full Bench of this Court in the case of Daya Nand v. State of Haryana and another, 1995(1) S.C.T. 423 :1995(1) SLR 57.

31. There is no doubt that concerned departments have been consulted and the competent authority had passed the order for continuation/re- employment of the respondent No. 2. The material question is whether any of these records indicate application of mind by the competent authority in regard to public grounds, exceptional circumstances and need for re-employment of the said officer in the face of the instructions. We must notice that the record produced before us is neither data based nor is it satisfying any of the above ingredients. In fact it appears that extension and re-employment has been granted on the

mere asking of the said respondent whose own note is devoid of any substance and merit.

32. Learned counsel for the petitioners have further relied upon J.R. Raghupathy and Others Vs. State of A.P. and Others, relevant paras of which are reproduced hereunder :-

1. These appeals by special leave and the connected special leave petitions are directed against the various judgments and orders of the Andhra Pradesh High Court involve a question of principle, and relate to the location of Mandal Headquarters in the State of Andhra Pradesh under S. 3(5) of the Andhra Pradesh Districts (Formation) Act, 1974. The main issue involved is whether the location of Mandal Headquarters was a purely governmental function and therefore not amenable to the writ jurisdiction of the High Court under Art. 226 of the Constitution. In the present cases we are concerned with the location of 12 Revenue Mandal Headquarters....

4. As many as 124 petitions under Art. 226 of the Constitution were filed in the High Court by individuals and gram panchayats questioning the legality and propriety of the formation of certain Revenue Mandals, and particularly location of Mandal Headquarters, abolition of certain Mandals or shifting of Mandal Headquarters, as notified in the preliminary notification issued under sub-s.(5) of S.3, deletion and addition of villages to certain mandals. Some of the writ petitions were heard by one Division Bench and the others by another, both the Benches being presided over by Raghuvir, J. who has delivered all the judgments. Incidentally there is no statutory provision relating to location of Mandal Headquarters and the matter is governed by GOMs dated 25th July, 1985 issued by the State Government laying down the broad guidelines for the formation of Mandals and also for location of Mandal Headquarters. The learned Judges upheld the validity of formation of Mandals as also the aforesaid GOMs and in some cases they declined to interfere with the location of Mandal Headquarters holding that the Government was the best judge of the situation or on the ground that there was a breach of the guidelines, and directed the Government to reconsider the question of location of Mandal Headquarters. However, in other cases the learned judges have gone a step further and quashed the final notification for location of Mandal Headquarters at a particular place holding that there was a breach of the guidelines based on the system of marking and also on the ground that there were no reasons disclosed from deviating from the preliminary notification for location of Mandal Headquarters at another place. One of the arguments advanced before us in the cases where the High Court has declined to interfere is that both the High Court and the State Government should have applied a uniform standard in dealing with the question and generally it is said that the "State Government should at any rate have adhered to the guidelines in fixing the location of Mandal Headquarters without being guided by extraneous considerations.

17. We find it rather difficult to sustain the interference by the High Court in

some of the cases with location of Mandal Headquarters and quashing of the impugned notification on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience or that the Headquarters should be fixed at a particular place with a view to develop the areas surrounded by it or that merely because a particular person who was an influential Member of Legislative Assembly belonging to the party in opposition had the right of representation but failed to avail of it. The location of Headquarters by the Government by the issue of the final notification under sub-S.(5) of S. 3 of the Act was on a consideration by the Cabinet Sub-Committee of proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like Gram Panchayats and the general public, keeping in view the relevant factors. Even assuming that any breach of the guidelines was justiciable, the utmost that the High Court have done was to quash the impugned notification in a particular case and direct the Government to reconsider the question. There was no warrant of the High Court to have gone further and directed the shifting of the Mandal Headquarters at a particular place.

18...Even though a non-statutory rule, bye-law or instructions may be changed by the authority who made it, without any formality and it cannot ordinarily be enforced through a Court of law, the party aggrieved by its non enforcement may, nevertheless, get relief under Art. 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or practice would result in arbitrariness or absence of fair play or discrimination,- particularly where the authority making such non-statutory rule or the like comes within the definition of "State" under Art. 12....

33. Learned counsel for the petitioners have again relied upon Joint Action The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, wherein it has been held as follows :-

18. In Khet Singh Vs. Union of India (UOI), this Court considered the scope and binding force of the Executive instructions issued by the Narcotic Bureau, New Delhi and came to the conclusion that such instructions are binding and have to be followed by the investigating officer, coming within the purview of Narcotic Drugs and Psychotropic Substances Act, 1985, even though such instructions do not have the force of law. They are intended to guide the officers and to see that a fair procedure is adopted by them during the investigation of the crime.

20. Thus, an executive order is to be issued keeping in view the rules and executive business, though the executive order may not have a force of law but it is issued to provide guidelines to all concerned, who are bound by it.

21. In Union of India and another Vs. Amrik Singh and others, this Court examined the scope of executive instructions issued by the Comptroller and

Auditor General for making the appointments under the provisions of Indian Audit and Accounts Department (Administrative Officers, Accounts Officers and Audit Officers) Recruitment Rules, 1964, and came to the conclusion that the Comptroller and Auditor General of India had necessary competence to issue departmental instructions on matters of conditions of service of persons serving in Department, being the Head of the Department, in spite of the statutory rules existing in this regard. The Court came to the conclusion that an enabling provision is there and in view thereof, the Comptroller and Auditor General had exercised his powers and issued the instructions which are not inconsistent with the statutory rules, the same are binding for the reason that the provision in executive instructions has been made with the required competence by the Comptroller and Auditor General.

34. Reliance has also been placed on Virender S. Hooda and Others Vs. State of Haryana and Another, wherein the Hon'ble Supreme Court held that the Court must give effect to a policy unless the same is contrary to the rules. Therein it was held as follows :-

4. The view taken by the High Court that the administrative instructions cannot be enforced by the appellant and that vacancies became available after the initiation of the process of recruitment would be looking at the matter from a narrow and wrong angle. When a policy has been declared by the State as to the manner of filling up the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time and so long as these instructions are not contrary to the rules, the respondents ought to follow the same.

35. The next point raised by learned counsel for the petitioners is that the act of declaring Municipal Councils as Municipal Corporations by the State Government is wholly arbitrary and thus unconstitutional. In this context Mr. Kanwaljeet Singh, Sr. Advocate appearing on behalf of municipal council SAS Nagar Mohali has argued that a resolution was passed by the Municipal Council which envisages more area. Hence, he has argued that there was need to include more area before a Municipal Corporation should be notified. No recommendation from Regional Deputy Director was obtained before declaring the municipal council as larger urban rea. He has also argued that requirement of Section 3 is ignored in the noting. The population of Mohali is 1,48,000 which also does not fulfill the requirement of declaring an area to be an urban area.

36. Mr. H.S. Sethi too has stated the aforesaid act of the Government to be completely arbitrary. He has drawn the attention of the Court towards Annexure P-8 which is the directions by the Government to all the Commissioners of Municipal Corporations in the State of Punjab, the Executive Officers of Municipal councils and Executive Officers of the Improvement Trust regarding preparation of budget for the year 2011-12. These directions nowhere indicate as to how the expenditure will be incurred on making these municipal corporations. As per learned counsel no body has considered the viability as to how and from where

the funds will be generated to meet the extra expenditure. He has further argued that Municipal Council Phagwara has only 27 Wards whereas as per Section 5 of the Punjab Municipal Corporation Act there should be 50 wards for declaring a municipal council as a municipal corporation. So the whole exercise by the Government is in complete derogation of the statutory provisions. He has also referred to Annexure P-4 vide which a proposal was sought by the Government from the Executive Officer, Municipal Council, Phagwara for upgrading it into a Corporation. That letter reached the office of Municipal Council, Phagwara on 21.07.2011 and without even waiting for the reply the government on 23.07.2011 announced the formation of Municipal Corporation and the notification was issued on 26.07.2011. All this shows the mala fide of the Government.

37. On the other hand learned counsel for the respondents have argued that everything was taken into consideration before declaring the municipal council as municipal corporations in each case. There is no mala fide of any kind as argued by learned counsel for the petitioners. They have argued that Government can frame its own policies whenever it thinks it appropriate unless or until the same is illegal or contrary to law. They have argued that Section 3 has been completely complied with. They have placed before the Court copies of the files wherein the matter regarding up gradation of Municipal Councils SAS Nagar Mohali, Pathankot, Phagwara and Moga was considered and all the relevant factors enumerated in Section 3 were noticed. By way of illustration the proceedings taken for the up gradation in the case of Municipal Council Pathankot can be seen, the translated version of which is reproduced here as under :-

...It is stated by the Deputy Commissioner Gurdaspur that Pathankot is the Gateway of Jammu and Kashmir and Himachal Pradesh. There is trading activities in food grains and daily needs in Pathankot City. The City has a population of 1,56,416 as per 2011 census. In the Pathankot City there are Air port and Military offices which have a population of about 43164 persons. Municipal Council Pathankot has 33 wards and is spread over 22.10 Sq, Kms. There are around 25 Hospitals and two railway stations, Pathankot Cantt and Pathankot. It has a bus stand also and also having a facility of on line booking in the City. It has also a tourist hub which has 100 hotels and restaurants and at least 10 hotels are of 3 stars level. Pathankot is also gateway of Jammu and Kashmir (Sri Nagar-Leh Ladhakh) leading to Dharamshala, Dalhousie, Kulu and Manali of Himachal Pradesh. Pathankot has a major defence establishments like Mamoon Cantt having 6 brigades, one Major General, 21 Sub Area, UBD Kanal Bandh, Medical College, Pioneer Group of Industries, Banaspati Refind, Main Stone Crusher, Hotels, Industries etc. There are brick kilns and Timber Mandi. A long process is being made for the development of this city for the last few decades but some difficulties are being faced due to some reasons. Recommendation has been made by deputy Commissioner Gurdaspur that Pathankot Municipal Council and its adjoining sub urban area be declared as large urban area under Municipal Corporation Act, 1976.

38. Proceedings with regard to other municipal councils are not being mentioned here so as to avoid unnecessary burden on the file.

39. Learned counsel for the respondents have relied upon BALCO Employees Union (Regd.) Vs. Union of India and Others, . The relevant para is reproduced herein below :-

92. In a democracy, it is the prerogative of each elected government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

40. Reliance has also been placed upon Poonam Verma and others v. Delhi Development Authority, AIR 2008 SC 70 wherein the Hon"ble Supreme Court held as follows :-

24. Guidelines per se do not partake to the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Mr. Ram Parkash himself has relied upon a decision of this Court in Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, wherein it has been laid down :-

100.....This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve." (See also Narendra Kumar Maheshwari v. Union of India and others 1990(supp) SCC 440 at 508; Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, ; J.R. Raghupathy and others v. State of A.P. And others, (1988) 4 SCC 464 (paragraph 31); Uttam Parkash bansal and others v. L.I.C. of India, (2002) 100 DLT 487.

Guidelines being advisory in character per se do not confer any legal right.

41. They have also relied upon certain paras in J.R. Raghupathy"s case (supra), which are as follows :-

5. Myriad are the facts. It is not necessary for us to delve into the facts in any detail. It would suffice for our purposes to touch upon the facts in some of the cases to present the rather confusing picture emerging as a result of conflicting directions made by the High Court. It appears that Raghuvir, J. relied upon the underlying principle emerging from his earlier decision delivered on behalf of himself and Sriramulu, J. in the Gram Panchayat, Chinna Madur v. Government of Andhra Pradesh, (1986)1 Andh WR 362 which he calls as the "Chandur principle". In that case following the earlier decision of the High Court where a

place called Chandur was not shown in the preliminary notification for formation of a taluk, but was chosen to be the place of location of the Taluk Headquarters in the final notification, it was held that in such a case publication of the final notification could not be sustained and it was for the Government to give reasons for such deviation. The decision proceeded on the principle that where guidelines are issued regulating the manner in which a discretionary power is to be exercised, the Government is equally bound by the guidelines. If the guidelines were violated, it was for the Government to offer explanation as to why the guidelines were deviated from. We are afraid, there is no such inflexible rule of universal application. The learned Judges failed to appreciate that the guidelines issued by the State Government had no statutory force and they were merely in the nature of executive instructions for the guidance of the Collectors. On the basis of such guidelines the Collectors were asked to forward proposals for formation of Revenue Mandals and for location of Mandal Headquarters. The proposals forwarded by the Collectors were processed in the Secretariat in the light of the suggestions and objections received in response to the preliminary notification issued under S.3(5) of the Act and then placed before a Cabinet Sub Committee. The ultimate decision as to the place of location of Mandal Headquarters was for the Government to take. It cannot be said that in any of the cases the action of the government for location of such Mandal Headquarters was mala fide or in bad faith or that it proceeded on extraneous considerations. Nor can it be said that the impugned action would result in arbitrariness or absence of fair play or discrimination.

18. Broadly speaking, the contention on behalf of the State Government is that relief under Art. 226 of the Constitution is not available to enforce administrative rules, regulations or instructions which have no statutory force, in the absence of exceptional circumstances. It is well-settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's Administrative Law, 2nd Edn. at p.144:

Administrative instructions, rules or manuals, which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant maybe held liable by the State and disciplinary action may be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is that not having the force of law, they cannot confer any legal right upon anybody, and cannot, therefore, be enforced even by writs under Art. 226.

In G.J. Fernandez Vs. State of Mysore and Others, the petitioner submitting the lowest tender assailed the action of the Chief Engineer in addressing a communication to all the tenderers stating that even the lowest tender was unduly high and enquired whether they were prepared to reduce their tenders. One of them having reduced the amount of his tender lower than the lowest, the

Chief Engineer made a report to the Technical Sub-Committee which made its recommendations to the Major Irrigation Projects Control Board, the final authority, which accepted the tender so offered. The High Court dismissed the writ petition holding that there was no breach of the conditions of tender contained in the Public Works Department Code and further that there was no discrimination which attracted the application of Art. 14. The question that fell for consideration before this Court was whether the Code consisted of statutory rules or not. The so-called Rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, C.J. Speaking for the Court held that under Art. 162 the executive power of the State enables the Government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to Court for any relief on the alleged breach of the instructions. That precisely is the position here. The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for location of its Headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the Official Gazette. The guidelines were mere departmental instructions meant for the Collectors. The ultimate decision as to formation of a Revenue Mandal or location of its Headquarters was with the Government. It was for that reason that the Government issued the preliminary notification under sub-s.(5) of S.3 of the Act inviting objections and suggestions. The objections and suggestions were duly processed in the Secretariat and submitted to the Cabinet Sub-Committee along with its comments. The note of the Collector appended to the proposal gave reasons for deviating from the guidelines in some of the aspects. Such deviation was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e. to bring the administration nearer to the people. The Cabinet Sub-Committee after consideration of the objections and suggestions received from the Gram Panchayats and members of the public and other organisations as well as the comments of the Secretariat and the note of the Collector came to a decision applying the standards of reasonableness, relevance and purpose while keeping in view the object and purpose of the legislation, published a final notification under sub-s.(5) of S.3 of the Act. There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its Headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.

30. We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under sub-s.(5) of S.3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the gram panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters should be at place "X" rather than place "Y" as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners.

As has been seen above, there is divergence of views expressed in the judgments with regard to the nature of guidelines. While the judgment in the case of Sanjay Thakre (supra) holds that guidelines are binding, in the case of J.R. Raghupathy (supra) the view taken is that though they are not binding, yet a party aggrieved by their non-enforcement may seek and obtain relief under Article 226 where their non-observance would result in arbitrariness, absence of fair play or discrimination, and the judgments in ALPAI and Virender Singh Hooda's case (supra) merely saying that they ought to be followed.

42. In my humble view the case closest in point is that of J.R. Raghupathy (supra) because there also the issue was of up gradation of certain areas into Mandal Head Quarters and the nature of guidelines issued were also similar to the one issued in the present cases.

43. It would be seen that the statutory provisions viz. Section 3 deals with many parameters and not population alone. An illustrative perusal of the note relating to municipal council Pathankot (supra) reveals that the parameters like population, tourist potential, geographical importance and other non agricultural activities have been noticed. The question which arises is whether the guideline which talks of population would be mandatory and would supersede the statute itself. Again in my considered opinion this could not be so. It has to be thus held that the guidelines, as held by the Hon"ble Supreme Court in J.R. Raghupathy's case (supra) had no statutory force and were merely in the nature of executive instructions. It has also to be held that by issuance of guidelines a situation cannot be created where population would become the supervening factor for declaration of an urban area into a municipal corporation and that the other statutory parameters would pale into insignificance.

44. Learned counsel for the petitioners have also placed reliance on the judgment in V.K. Kapoor and Others Vs. State of Haryana and Others, wherein the declaration of Panchkula as a Municipal Corporation by the State of Haryana was set aside. Though their lordships considered other aspects also, yet the determining factor in that case was the statutory precondition of Section 3 of the Haryana Municipal Corporation Act that any area to be declared a Municipal Corporation its population must be 3 lacs. In view of this stark difference between the statutory provisions that case would not come to the aid of the petitioners.

45. Once it has been held that the process of declaration of an urban area into a Municipal Corporation is essentially a legislative function, the only ground on which it can be challenged is the ground of unconstitutionality or ultra vires. The argument regarding ultra vires has not even been raised and as regards the constitutionality the only ground on which this legislative action has been sought to be termed unconstitutional is arbitrariness. In this connection, as noticed above, the arguments which have been brought to bear are that the recommendation/s proposed inclusion of certain areas; the financial condition of the municipal councils; the non consideration of the statutory parameters; non adherence to the population parameter; the political motives assigned to the declaration and that after soliciting the views of municipal council concerned the Government did not wait to receive them leave alone take them into consideration but considered only the recommendations of the Deputy Commissioners who had no role to play.

46. On the other hand, as mentioned above, a perusal of the nothings on the files relating to the declaration of these municipal corporations reveals that the statutory parameters were considered. Once these have been considered by the competent authority it is not part of the province of the Court to sit in appeal or to substitute its own judgment. In any case as was most felicitously held by Mr. Justice Oliver Wendell Holmes in Missouri, Kansas, & Texas Railway Company of Texas v. Clay May. 194 U.S. 267(1904) as follows :-

Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.....

No other point was argued.

On a conspectus of all that has been discussed above the impugned notifications cannot be set aside.

The writ petitions are dismissed.