
(2004) 09 AHC CK 0133
In the Allahabad High Court
Case No : C.M.W.P. No. 37427 of 2002

Gram Panchayat and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 243
Uttar Pradesh Municipalities Act, 1916 — Section 3(2)

Citation : (2005) 1 AWC 275

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J

Bench : Division Bench

Advocate : Murlidhar, J.P. Singh and R.P. Singh, for the Appellant; A.K. Yadav, S. C., for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, A.C.J. and Sunil Ambwani, J.—Heard learned counsel for the petitioners and the learned standing counsel.

2. The petitioners have challenged the impugned Government order dated 18.7.2002 (Annexure-3 to the petition). It appears that a Gazette notification dated 6.11.2001 was published in the U. P. Gazette u/s 3(2) of the U. P. Municipalities Act, 1916 read with Article 243O of the Constitution proposing to include the areas of the petitioner's Gram Panchayats in Nagar Panchayat Mohammadabad, Gohna, District Mau. A true copy of the Gazette notification dated 6.11.2001 is Annexure-1 to the petition.

3. The short point pressed by the learned counsel for the petitioners is that in this notification dated 6.11.2001 it is stated that objections may be filed by 2.11.2001. Learned counsel for the petitioners submitted that obviously the petitioners could not file any objection by 2.11.2001 when the gazette notification is dated 6.11.2001.

4. In our opinion, it is obvious that the date 2.11.2001 mentioned in the gazette

notification was by clerical mistake. In para 10 of the counter-affidavit it is stated that the date 2.11.2001 was printed by mistake, and the correct date was 21.11.2001. At any event, the petitioners never filed any objection in response to the Gazette notification dated 6.11.2001, and hence in our opinion it does not lie in their mouth to raise their grievance now. It must be remembered that writ jurisdiction is discretionary jurisdiction and we are not bound to issue a writ merely because of a technical violation of law. In a writ petition not only must the petitioner show violation of law, but he must also show equity in his favour. Unless both these requirements are satisfied, a writ will not be issued. The petitioners never filed any objection in response to the gazette notification dated 6.11.2001. Any man with common sense would have realised that the date 2.11.2001 mentioned in the Gazette notification dated 6.11.2001 was clerical mistake. The petitioners should have filed their objection to the Gazette notification dated 6.11.2001, but they never did so, and now they are raising hyper technical objections.

5. Moreover, it appears that several other persons had filed their objections in response to the said Gazette notification dated 6.11.2001 and on these objections, the District Magistrate submitted a report, a copy of which has been annexed as Annexure C. A.-2 to the counter affidavit. In this report, the District Magistrate has pointed out that the facilities of the Nagar Panchayat have been extended to the areas covered by the petitioners' Gram Panchayats.

6. In the circumstances, this is not a fit case to exercise our discretion under Article 226 of the Constitution of India. Accordingly, this petition is dismissed.