
(1992) 07 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1794 of 1989

Gram Panchayat and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 23-07-1992

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 4(2)

Citation : (1992) 2 WLN 37

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—The petitioner by this writ petition has prayed that the notification dated 28th June, 1988 (Annex. 3) may be quashed and in the alternative a direction may be issued to the State Government to exclude the area of Gram Panchayat, Akarabhata from the area of the Municipal Board, Abu Road and allow the petitioner Gram Panchayat, Akarabhata to function as a unit of Local self Government within the frame work of the Rajasthan Panchayat Act, 1953.

2. The petitioner No. 1 is a duly constituted Gram Panchayat and has filed this writ petition through its Sarpanch, petitioner No. 2. Petitioner No. 2 and the petitioners No. 3, 4, 5 and 6 are the Sarpanch and Panchas of the petitioner Gram Panchayat. In the year 1981 a notification was issued by the Government dated 10th August, 1981 which was published in the Rajasthan Gazette dated 20th August, 1981 Part VI Kha. By this notification, the Government expressed its intention to extend the municipal limits of the Municipal Board, Abu Road towards Akarabhata on the northern side. On the aforesaid notice, the objections were invited and the Gram Panchayat raised objections against the inclusion of this area in the municipal limits of the Municipal Board, Abu Road by filing objections in the year 1981. The aforesaid objections were duly considered and the then Collector sent report against the inclusion of this area within the

municipal limits" of the Municipal Board, Abu Road. It appears that no further steps were taken up and the villagers of this Gram Panchayat thought that the matter has been given up. After 7 years, the Government again issued a notification dated 28th June, 1988 u/s 4(2) of the Rajasthan Municipalities Act, 1969 (referred to hereinafter as "the Act of 1959"), by which the limits of the Municipal Board, Abu Road on the northern side which included major area of the petitioner Gram Panchayat and wards No. 1, 2, 3 and 5 were sought to be included within the municipal limits of the Municipal Board, Abu Road. On enquiry, it was revealed that the report was obtained from the Collector Shri Rohit Brandon in January, 1987 that the area may be included in the municipal limits of the Municipal Board, Abu Road. It is submitted that after 1981 till 1987-88 no fresh notification was issued inviting the objections whatsoever except the report of the Collector and on the basis of the report of the Collector the objections filed by the villagers were rejected and the notification dated 28th June, 1988 (Annex. 3) was issued. It is this notification dated 28th June, 1988 which is sought to be challenged by this writ petition.

3. A detailed history has been given by the petitioners that on account of some pressure by one group or by other the matter was kept dormant and after some time it was again sought to be re-activated. That is a matter of history and nothing turns on that. The fact remains that the Government has ultimately issued the impugned notification and included some of the area of this Gram Panchayat in the municipal limits of the Municipal Board, Abu Road. Various difficulties have been pointed out like that by inclusion of this area the residents of that area will be deprived of various benefits which are being made available to the tribal areas by the Government of India and the inclusion will not be conducive to public interest. It is submitted that the Scheduled Castes and Scheduled Tribes residents of that area will suffer as the Municipal Board has not been able to provide the same benefits as are being given by the Gram Panchayat. It is also submitted that the delay of six years itself shows that the Government has dropped the proceedings and for fresh initiation of the proceedings the provisions of law were not followed. It is submitted that the objections filed by the villagers are not considered. Looking to all these factors the original note-sheet of the Government was summoned for perusal of the Court on the request of the counsel for the petitioner. The same was produced before this Court for perusal. A reply has also been filed by the Municipal Board, Abu Road as well as by the State Government. It has been pointed out in the reply filed by both the respondents that the matter was never dropped and the matter remained under the consideration of the Government, by some, how it could not be disposed off. The Municipal Board as well as the State Government have raised objection in its reply that the notification was issued in the year 1988 and the writ petition has been filed in the year 1989. It is also submitted that the Municipal Board, Abu Road has already set up an octroi post in the newly added area and also employed Harijans for sweeping the area and they have also taken a number of steps. The Municipal wards have been divided for election on

the basis of that inclusion. Therefore, it is submitted that the delay in this context is fatal. It is also submitted that the matter was never finally disposed off and the matter remained under consideration of the Government, and ultimately the final decision was taken in the year 1988. It is also submitted that the action of the State Government is legislative in character and this Court will not go into all these questions of facts.

4. Mr. Mridul, learned Counsel appearing for the Municipal Board, in support thereof has invited my attention to a decision of the Hon'ble Supreme Court rendered in the case of Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others,

5. Mr. Shishodia, learned Counsel for the petitioners has also invited my attention to a decision of this Court in the case of J.K. Synthetics Ltd. v. The Municipal Board, Nimbahera and Anr. D.B. Special Appeal No. 84/87, decided on 13th September, 1989.

6. I have heard both the learned Counsel and perused the record. So far as the inclusion of a particular area or exclusion or constitution of new Municipalities has been held by their Lordships of the Supreme Court to be a legislative function. In this connection, their Lordships of the Supreme Court after consideration of earlier cases on the subject i.e. constitution and reconstitution of the Municipalities held as under:

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.

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.

7. Therefore, keeping in view these parameters laid down by their Lordships of the Hon'ble Supreme Court it cannot be legitimately said that for establishment of a municipality the Court can insist for enforcement of the principles of natural justice as such actions are of legislative character. In the present case, the objections were invited way back in the year 1981 and after perusal of the note-sheet which was placed for my consideration it appears that the matter has passed through various hands and at one point of time the Collector was against the inclusion of the wards of this Panchayat but the subsequent Collector in the year 1987 found that the inclusion of such wards is in the interest of the public. I have gone through the note-sheets and I find that after considering the various aspects of the matter including the report of the earlier Collector and the objections filed by the Gram Panchayat a positive decision was taken by the Government for inclusion of these areas within the municipal limits of the Municipal Board, Abu Road. Since it is a legislative act, therefore, I cannot go into the question as to whether all the objections were considered in detail or not. Suffice it to say that all the objections were before the Government and the Government after taking into consideration these objections and the two reports of the Collectors took a conscious decision of expanding the limits of the Municipal Board, Abu Road then this Court cannot sit over on that decision and review the same. In this connection, I may also refer to the observations made by a Division Bench of this Court in *M/s. J.K. Synthetics Ltd.* wherein their Lordships called the original file of the Government and after perusing the note-sheet it was found that though it is not mentioned in so many words that the objections are insufficient and invalid, it was observed that the opinion was formed on the basis of the material placed before the Minister Incharge. As already mentioned above, I myself have perused the note-sheet of the file pertaining to this case and I find that the matter has been delayed on account of various reasons and the report of the first Collector was also on the record and likewise the report of the subsequent Collector was also placed on record and his comments were asked for on the basis of the objections filed by this Panchayat. After considering all that the Government has consciously taken the decision to extend the limit of the Municipality. I am satisfied that the matter received a due consideration and a conscious decision was taken for extension of the municipal limit by including some of the wards of this Gram Panchayat, Akarabhata.

8. Mr. Shishodia has submitted that some of villagers will be deprived of the benefits of trial area which are being extended to the villagers of this area of Gram Panchayat Akarabhata. He has also submitted that the Scheduled Castes and Scheduled Tribes will not be given the same benefits which are being given by the Gram Panchayat. These are all administrative matters on which I cannot sit over as an appellate authority and adjudicate upon. More so, the realities of life cannot be ignored that the urban areas are being expanded and a number of factories which have come up around this area and looking to the need of development and urbanisation some of the wards of this Gram Panchayat have been included then this Court cannot sit over on these administrative matters

and review the matter judicially.

9. So far as the argument of the learned Counsel regarding mala fides is concerned, I do not find any mala fide exercise of power by any authority. Since the inclusion of certain area or constitution of the municipalities is a legislative function, therefore, there is no question of mala fides in exercise of such power.

10. In this back ground, I am of the opinion that there is no merit in this writ petition and the same is dismissed.