

(2021) 01 SHI CK 0247

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 6230 Of 2020

Gram Panchayat Bali Koti

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21, 48A
Uttar Pradesh Panchayat Raj (Amendment) Act, 1994 — Section 3, 3(2), 4, 120(1), 140

Citation : (2021) 01 SHI CK 0247

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : V. D. Khiktta, Daleep Chand, Ashok Sharma, Vinod Thakur, Vikas Rathore, Shiv Pal Manhans, Bhupinder Thakur, Seema Sharma, Yudhvir Singh Thakur, Ajeet Singh Saklani

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of following substantive relief:

That the respondents may kindly be directed to consider and decide the claim of the petitioner Panchayat for bifurcation/formation of new Gram

Sabha/Gram Panchayat Chamra Mohrar (Kusau) in Development Block Shillai, Tehsil Shillai, District Sirmour, from existing Gram Sabha/Gram

Panchayat Balikoti, Development Block Shillai, Tehsil Shillai, District Sirmour, H.P. and issue notification/order accordingly.

2. The residents of Gram Panchayat Balikoti, who wanted to bifurcate the Panchayat to form new Gram Sabha Chamra Mohrar (Kusau), had sent

request through the Gram Panchayat to this effect to the Deputy Commissioner, Sirmaur, on 22.1.2020. The District Panchayat Officer, Nahan, issued

letter dated 24.8.2020 requesting the Block Development Officer, Shillai, to issue process and after evaluating the representation sent report to his

office so that the same could be sent to the Director, Panchayati Raj for further necessary action. The Deputy Commissioner, Sirmaur, sent his

recommendation for bifurcation of new Gram Sabha, yet the Gram Sabha was not bifurcated constraining the petitioner to file the instant petition.

3. Even though, the respondents have not filed reply, but necessary instructions in this behalf have been placed on record by the learned Advocate

General, a perusal whereof reveals that as per criteria, number of villages in the existing/old Gram Sabha is required to be equal to 5 or more in

number, whereas in the instant case, the existing/old Gram Sabha had only 3 villages. It is in this background that the proposal of the Gram Sabha was not accepted.

4 Section 3 of the Act reads as under:Â?

3. Declaration of Sabha area.Â (1) The Government may, by notification, declare any village or group of contiguous villages with a population of not

less than one thousand and not more than five thousand to constitute one or more Sabha areas for the purposes of this act and also specify its

headquarter:

Provided that in a Scheduled area the Government may by order declare any village or group of contiguous villages with a population of less than one

thousand to constitute a Sabha area:

Provided further that the Government may, after having due regard of the geographical location, lack of means of transport and communication and

administrative convenience, declare an area comprising a village or group of contiguous villages having a population either less than one thousand or

more than five thousand to constitute a Sabha area.

(2) The Government may, at the request of the Gram Sabha concerned or otherwise, and after previous publication of a proposal by a notification, at any time,Â?

(a) increase any Sabha area by including within such Sabha area any village or group of villages; or

(b) diminish any Sabha area by excluding from such Sabha area any village or group of villages; or

(c) alter the headquarter of any Sabha area; or

(d) alter the name of any Sabha area; or

(e) declare that any area shall cease to be a Sabha area: 2[*****]

3[(2A) When on account of the reason that the Sabha area is, during the term of the Gram Panchayat, increased or diminished or ceased under

sub-section (2), the increase or diminution or cessation of the Sabha area shall not affect the term of the office bearers of Gram Panchayat, till the

expiration of the duration of the Gram Panchayat specified in sub-section (1) of section 120 or its dissolution under section 140 of this Act.]

(3) If the whole of the Sabha area is included in a municipality, the Sabha area shall cease to exist and its assets and liabilities shall in the manner

prescribed be disposed of.

5. It would be noticed that unlike other provisions of the Act, Section 3 thereof does not envisage impliedly muchless expressly postulate an

opportunity for inhabitants of the area to file objections and being heard before ordering bifurcation of the Panchayat(s).

6. Once the legislature, in its wisdom, has not chosen to provide for any opportunity of hearing for inhabitants of the area and to file objections, as

aforesaid, the same cannot be presumed or read into as it would amount to legislating or re-writing the provision, which indisputably is beyond the

domain of this Court.

What is not expressly provided cannot be presumed by necessary implication.

7. It cannot even be remotely suggested that the legislature by default omitted to provide the right to file objections and be heard under Section 3 of the

Act. In fact, it is by a conscious legislative decision that such a right is designedly not acknowledged under Section 3 of the Act. Procedural

requirement of hearing is not required in the exercise of legislative power unless such a right or hearing was expressly provided.

8. In coming to such conclusion, we are fortified by the decision rendered by the Hon'ble Supreme Court in State of Punjab vs. Tehal Singh and ors.

(2002) 2 SCC 7, wherein it was held that determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an

act, legislative in character, in the context of the provisions of the Act and hence, does not subject to rules of natural justice. It was further held that

the enactment may provide for observance of principles of natural justice and if the provisions are there, the same should be observed and if provisions

do not provide for the same, the residents of the area cannot insist for giving an opportunity of hearing. It shall be apt to reproduce relevant

observations as contained in paras 5 to 9, which read as under:Â?

5. Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of

Sections 3 and 4 of the Act. The said power could either be legislative, administrative or quasiÂ?judicial.

6. In *Rameshchandra Kachardas Porwal and Ors. etc. v. State of Maharashtra and Ors. etc.*, [1981] 2 SCC 72,2 it was held that making of a

declaration by notification that certain place shall be principal market yard for a market area under the relevant agricultural produce Market Act was

an act legislative in character. In *Union of India and Anr. v. Cynamide India Ltd. and Anr.*, [1987] vol. 2 SCC 720, this Court while making distinction

between legislative, administrative and quasiÂ?judicial held thus:

A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the

making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy.

Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration

is the process of performing particular acts, of issuing particular orders or of a making decisions which apply general rules to particular cases'. It has

also been said: "'Rule making is normally directed toward the formulation or requirements having a general application to all members of a broadly

identifiable class'" while, "'an adjudication, on the other hand, applies to specific individuals or situation'". But, this is only a broad distinction, not

necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular

application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates

the future cause of action. Adjudication is determinative of the past and the present while legislation is indicative of future. The object of the rule, the

reach of its application. The rights and obligations arising out of it. Its intended

effect on past, present and future events, its form, the manner of its promulgation are some factors which may help; in drawing the line between legislative and non-legislative acts".

7. The principles of law that emerge from the aforesaid decisions are (1) where provisions of a statute provide for the legislative activity, i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character.

8. Viewed in the light of the statement of law stated hereinbefore, we find that the provisions of Sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Sections 3 of the Act relates to an area inhabited by the residents which is sought to be excluded or included in a Gram Sabha. The declaration under Section 3 of the Act by the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4 of the Act do not operate for the past transactions but for future situations. Under the aforesaid situation, when declarations by issue of notifications by the Government are made under Sections 3 and 4 of the Act respectively, determining the territorial area of a Gram Sabha and establishing a Gram Sabha for that area, such declarations become operative at once. Once declarations are made under Sections 3 and 4 of the Act respectively and thereafter a Gram Panchayat is constituted under Section 10 of the Act, the entire remaining provisions of the Act becomes operative. On such declarations by a notification in the gazette, the Gram Sabha body corporate comes into being with a number of powers and functions conferred upon it under the Act. As soon as a Gram Sabha is established and

Gram Panchayat is constituted, they are entrusted with many general functions viz., constructions, repair, and maintenance of community assets, agriculture including agriculture extension, animal husbandry, dairy and poultry, fisheries, social and farm forestry, minor forest produce fuel and fodder, khadi, village and cottage industries, rural housing, rural electrification including distribution of electricity, non-conventional energy source, poverty alleviation programme, education including primary and secondary schools, adult and non-formal education, promotion of adult literacy, cultural activities, fairs and festivals, public health and family welfare; women and child development, social welfare etc. Further, Gram Sabhas and Gram Panchayats have been conferred numerous other powers and duties enumerated in Section 35 of the Act. Besides that, the Gram Panchayat is entrusted with the judicial functions which are civil and criminal in nature. The power exercisable under Sections 3 and 4 of the Act respectively by the Government was, therefore, not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principle of natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that on making of declaration under Section 3 of the Act determining the territorial area of a Gram Sabha and thereafter establishing a Gram Sabha for that area is an act legislative in character in the context of the provisions of the Act.

9. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, the rule of natural justice is required to be observed? It is almost settled law that an act legislative in character—primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principle of natural justice or provide for hearing to the resident of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included it in different Gram Sabhas or a local authority. However, it depends upon the

legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principle of natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority. In *Rameshchandra Kachardas Porwal and Ors. v. State of Maharashtra* (supra), this court held as thus:

In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the yard at one place and establishing it elsewhere was, therefore, bad. It was objections before a "'market area'" was declared under the Act, so should objection be invited and heard before a 'market yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice.

9. Learned counsel for the petitioner would argue that declaration of Gram Sabha area, in terms of Section 3 of the Act, undoubtedly is a legislative act, however implementation of Section 3, by issuing a notification, can, by no stretch of imagination, be said to be an act of legislature, therefore, the

present petition questioning the action of the respondents to be an administrative act, is definitely maintainable.

10. Strong reliance, in support of aforesaid contention, is placed on a division bench judgment of the Punjab and Haryana High Court in Jarmal Singh

vs. State of Punjab & ors., (2019¹) 193 PLR 714, more particularly, paras 9 and 12 to 15 thereof, which read as under:²

9. Mr. Anupam Gupta, learned Senior Advocate (Amicus curiae) submitted as under:³

(i) It is true that by virtue of 73rd amendment to the Constitution of India, Panchayat Raj amendment was brought into the constitution and thus,

Panchayats and Municipal Committees were given the constitutional status. Commenting on Sections 3 and 4 of the Act of 1994, he submitted that it

would make no difference due to the said constitutional amendment, Sections 3 and 4 of the Act of 1994 could be interpreted in any different manner.

He submitted that, though, it is true that in Tehal Singh's case (supra), no reference has been made to the said 73rd amendment giving Panchayats the

constitutional status. The principals of transparency and openness in governance which have been propounded by the Supreme Court at a later point

of time will have to be kept in mind while interpreting to Sections 3 and 4 of the Act of 1994. The larger bench decision of the Apex Court, in fact,

support the said view;

It has been contended that creation of Sections 3 and 4 of the Act of 1994 itself undoubtedly is a legislative Act. However, implementation of Sections

3 and 4 of the Act of 1994 by issuing notifications can, by no stretch of imagination, be said to be the act of legislature and that is the point that arises

in these writ petitions;

(ii) In support of his propositions on the aforesaid legal question, Mr. Anupam Gupta, learned Senior Advocate has cited several decisions and the gist

thereof would be cited by us in the present judgment.

12. We have heard learned counsel for the rival parties at length so also the preliminary objection raised by the learned State counsel.

13. In the case of Smt. Indira Nehru Gandhi versus Shri Raj Narain, AIR 1975 SC 229, interpreting the constitutional provisions, Mathew J., in so far

as the relevant aspect in the present case is concerned, stated thus:⁴

278. According to the historic analysis, the essence of the distinction between

legislative power and judicial power is that the legislature makes new law which becomes binding on all persons over whom the legislature, exercises legislative power; the judicature applies already existing law in the resolution of disputes between particular parties and Judges may not deviate from this duty. This view of the distinction between the obligation to apply and enforce rules and a discretion to modify rules or make new rules was at one time applied uncompromisingly in describing functions as legislative or judicial. Thus, De Lolme said that courts of equity as then existing in England had a legislative function. They are, he said, a kind of inferior experimental legislature, continually employed in finding out and providing law remedies for those new species of cases for which neither the courts of common law, nor the legislature have as yet found it convenient or practicable to establish any.³ Though this would show that neither for logic nor in language has the boundary between legislation and adjudication ever been rigidly and clearly drawn, the distinction between the two is well established.

.....

284. A despotic decision without ascertaining the facts of a case and applying the law to them, though dressed in the garb of law, is like a bill of attainder. It is a legislative judgment.

.....

291. A statute is a general rule. A resolution by the legislature that a town shall pay one hundred dollars to Timothy Coggan is not a statute, John Chipman Gray : Nature and Source of Law, p. 161.

.....

327. A sovereign in any system of civilised jurisprudence is not like an oriental despot who can do anything he likes, in any manner he likes and at any time he likes. That the Nizam of Hyderabad had legislative, judicial and executive powers and could exercise any one of them by a firman has no relevance when we are considering how a pro-sovereign - the holder of the amending power - in a country governed by a constitution should function.

14. In so far as the transparency and openness in governance is concerned, the Apex Court in the case of Cellular Operators Association of India and

others versus Telecom Regulatory Authority of India and others, (2016) 7 SCC 703 stated thus:Â?

82. In fact, a judgment of the Court of Appeal in England, being R v. North and East Devon Health Authority, ex p Coughlan, puts the meaning of consultation"" rather well as follows:Â?

It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.... (emphasis supplied)

.....

86. The question of transparency raises a more fundamental question, namely, that of openness in governance. We find that the Right to Information Act of 2005 has gone a long way to strengthen democracy by requiring that the Government be transparent in its actions, so that an informed citizenry is able then to contain corruption, and hold Governments and their instrumentalities accountable to the people of India."" (emphasis supplied)

89. In another context also this Court has emphasized the importance of openness of governance. In Global Energy Ltd. v. Central Electricity Regulatory Commission, this Court stated: (SCC p. 589, para 71) ""The law sometimes can be written in such a subjective manner that it affects the efficiency and transparent function of the Government. If the statute provides for pointless discretion to agency, it is in essence demolishing the accountability strand within the administrative process as the agency is not under obligation from an objective norm, which can enforce accountability in decisionÂmaking process. All lawÂmaking, be it in the context of delegated legislation or primary legislation, has to conform to the fundamental tenets of transparency and openness on one hand and responsiveness and accountability on the other. These are fundamental tenets flowing from due process requirement under Article 21, equal protection clause embodied in Article 14 and fundamental freedoms clause ingrained under Article 19. A

modern deliberative democracy cannot function without these attributes." (emphasis supplied)

In the said decision, finally, vide Para 92, the Apex Court exhorted the parliament to take up the issue in respect of transparency in supporting legislation: 92.

We find that, subject to certain well defined exceptions, it would be a healthy functioning of our democracy if all subordinate legislation were to be

transparent in the manner pointed out above. Since it is beyond the scope of this judgment to deal with subordinate legislation generally, and in

particular with statutes which provide for rule making and regulation making without any added requirement of transparency, we would exhort

Parliament to take up this issue and frame a legislation along the lines of the U.S. Administrative Procedure Act (with certain well defined exceptions)

by which all subordinate legislation is subject to a transparent process by which due consultations with all stakeholders are held, and the rule or

regulation making power is exercised after due consideration of all stakeholders' submissions, together with an explanatory memorandum which

broadly takes into account what they have said and the reasons for agreeing or disagreeing with them. Not only would such legislation reduce

arbitrariness in subordinate legislation making, but it would also conduce to openness in governance. It would also ensure the redressal, partial or

otherwise, of grievances of the concerned stakeholders prior to the making of subordinate legislation. This would obviate, in many cases, the need for

persons to approach courts to strike down subordinate legislation on the ground of such legislation being manifestly arbitrary or unreasonable.

14. The last judgment which we are referring is on the U.P. Panchayat Raj (Amendment) Act, 1994 that was brought into force. We think the

judgment in the State of U.P. and others' case (supra) and in particular the concluding para thereof, namely Para 52, is essentially required to be

seen. We quote Para 52 of the same, which reads thus: 52.

We are, therefore, more than satisfied that there were no mala fide intentions on the part of the State Government in giving the short time for

submitting the objections and for hearing and disposing them of. We may, however, make it clear that although, as pointed out earlier, the challenge to

the delimitation of the panchayat areas on the said grounds could not have been

made in the present case after the election notification was issued, the State Government should bear it in mind that if and when the next regrouping of the villages and redetermination of the panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, inconveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities etc. The opportunity will also provide an occasion for the people to come forward with suggestions for better and more viable, compact and cohesive regrouping of the villages for efficient administration and economic development. The objections are not to be invited to enable the people to exercise the sort of a right of self-determination which is sought to be spelt out by the High Court. The final decision with regard to the delimitation of the panchayat areas, after hearing the objections and suggestions, will, of course, be that of the State Government acting through Director.

15. We have carefully seen the clarification that the challenge to the objections, panchayati areas could not have been made after the election notification was issued. The present petitions were, however, filed much before the election notification came to be issued on 05.12.2018 and therefore, we think, we will be entitled to entertain these petitions. A careful look at the aforesaid Para 52 in the State of U.P. and others' case (supra) clearly shows that the Apex Court has asked the authorities to give sufficient opportunity to the people of the areas concerned for raising objections to remove their grievances. The aforesaid direction by the Apex Court is binding on the respondents. But what we find is that the orders made are not based on the required criteria or the relevant considerations or in some cases, no hearing took place. In the light of the various principles of law shown to us by Mr. Anupam Gupta, the learned Senior Advocate, we are inclined to hold that implementation of Section 3 of the Act of 1994 by issuing notifications as to the decision/amalgamation of the Gram Panchayat is not a legislative act or legislative function and is rather a quasi-judicial function attracting the principles of natural justice, openness in governance and transparency. In this context, the aforesaid Para 52 has apt

application. To sum up, in the light of the above law that is discussed above, we overrule the preliminary objection raised by the learned State counsel

and proceed to determine the petitions on their own merits.

11. We have considered the submissions of the learned counsel for the petitioner and have minutely analyzed the judgment in Jarmal Singh's case

(supra), however with due respect, we are unable to concur with the judgment of the Punjab and Haryana High Court as the same has been rendered

per incuriam inasmuch as most of earlier division bench judgments of that very Court i.e. Punjab and Haryana High Court including Gram

Panchayat Bassi Sekhan vs. State of Punjab & ors., 2009 (1) RCR (Civil) 242, CWP No. 3705/2007, titled as Inderjit Singh & ors. vs. State of

Haryana & ors., decided on 18.2.2014, Som Prakash & ors. vs. State of Haryana & ors., 2016 (3) RCR (Civil) 885 and the one rendered by the

Five Judge Bench in Suraj Bhan & ors. vs. State of Haryana & anr., (2017) 2) 186 PLR 605, wherein, after placing reliance on Tehal Singh's case

(supra) and other judgments of the Hon'ble Supreme Court, it was clearly held that function of the government in establishing a Corporation or

Panchayat is a legislative act, to which rules of natural justice are inapplicable and have not at all been considered.

12. In addition to the aforesaid judgments, judgment in Jarmal Singh's case (supra) runs contrary to the judgment of the Division Bench of that Court in

CWP No. 1725/2008, titled as Gram Panchayat Mann Majra vs. State of Punjab & ors. Dated 2.4.2012, which in turn, has been repeatedly followed

by, not only Punjab and Haryana High Court, but has also been followed by Madhya Pradesh High Court in Gyan Prakash Patel vs. State of Madhya

Pradesh, 2018(2) MPLJ 574.

13. In view of aforesaid exposition of law, we are clearly of the view that the power exercisable under Section 3 of the Act by the Government is not

an exercise of a judicial or quasi-judicial function, where the very nature of function involves the principles of natural justice or in any case of an

administrative function affecting the rights of an individual. As observed above, the function is legislative in character.

14. In this background, further question which arises for consideration is whether the State is obligated to adhere to the principles of audi alteram

partem before ordering bifurcation of the Panchayat(s), even though this is a

legislative function?

15. Even this question already stands answered in para 9 of the judgment in Tehal Singh's case (supra), however we may notice that a fine distinction

qua scope of judicial review of legislation/subordinate legislation vis-à-vis executive decision has been meticulously laid down by the Hon'ble

Supreme Court in *Bombay Dyeing & MFG. Co. Ltd. (3) vs. Bombay Environmental Action Group & ors.*, (2006) 3 SCC 43 4w, herein it was

observed as under:—

197. A matter involving environmental challenges may have to be considered by a superior court depending upon the fact as to whether the impugned

action is a legislative action or an executive action. In case of an executive action, the court can look into and consider several factors, namely,

(i) Whether the discretion conferred upon the statutory authority had been properly exercised;

(ii) Whether exercise of such discretion is in consonance with the provisions of the Act;

(iii) Whether while taking such action, the executive government had taken into consideration the purport and object of the Act;

(iv) Whether the same subserved other relevant factors which would affect the public in large;

(v) Whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and

(vi) Whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

198. It would, however, unless an appropriate case is made out, be difficult to apply the aforementioned principles in the case of a legislative act. It is

no doubt true that Articles 14, 21, 48 of the Constitution of India must be applied both in relation to an executive action as also in relation to a

legislation, however, although the facet of reasonableness is a constitutional principle and adherence thereto being a constitutional duty may apply, the

degree and the extent to which such application would be made indisputably would be different. Judicial review of administrative action and judicial

review of legislation stand on a different footing. What is permissible for the court in case of judicial review of administrative action may not be

permissible while exercising the power of judicial review of legislation. It may,

however, be a different thing to contend that the legislation had been enacted without constitutional principles in mind. The real question is whether the constitutional mandates had been complied with in making such legislation.

16. Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the Court in case of

judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation.

17. It would, thus, be abundantly clear that in case of an executive action, the court can look into and consider several factors, as enumerated above,

however principles will not apply or are not applicable in case of legislative act unless and until appropriate case is made out. Unfortunately, no such case has been set out in any of the petitions.

18 Similar issue came up before a Coordinate Bench of this Court, of which one of us (Tarlok Singh Chauhan, J.) was a member, in *Yudh Chand*

Saklani vs. State of Himachal Pradesh & ors., ILR 2016 (VI) HP 1733, and the question therein was with regard to establishment of municipality and

it was observed that the Courts cannot interfere with the legislative function unless the decision was not in public interest, but was taken with ulterior

motive at the behest of some interested persons. It shall be apposite to refer to the necessary observations as contained in paras 35 to 42 of the

judgment, which reads as under:Â?

35. Even otherwise, declaration of Municipalities is a legislative function, which is undertaken by the Government in larger public interest and ordinarily

Courts are not to interfere in the decisions so undertaken by the State Government until and unless the judicial conscious of the Court is satisfied that

the decision so taken is not in public interest, but has been taken with ulterior motive at the behest of some interested person or persons who

personally stand to gain by the declaration of such Municipality. In this case, the petitioner has not been able to demonstrate or prove the same.

Petitioner has not been able to demonstrate or prove that the declaration of area subject matter of the writ petition into a Nagar Parishad is either not

in public interest or this decision has not been taken by the Government in larger interest of inhabitants of the area, but the same has been taken by the

State Government to help a few individuals or the declaration was not done by

following statutory requirements of the Himachal Pradesh Municipal Act, 1994.

36. It is settled law that function of the Government while establishing a Municipality is neither executive nor administrative, but it is a legislative process.

37. In *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur*, (1980) 2 SCC 295, the Honâ??ble Supreme Court while dealing with U.P.

Town Areas Act, 1914 has held that power of the State Government to make a declaration under the same is legislative in character.

38. The Honâ??ble Supreme Court in *Baldev Singh and Ors. Vs. State of Himachal Pradesh*, (1987) 2 SCC 510 has held that affording of hearing to

affected persons is essential prerequisite for constituting notified area, however, hearing contemplated is not required to be oral and can be by inviting

objections and disposing them of in a fair way.

39. The Honâ??ble Supreme Court in *Sundarjas Kanyalal Bhathiaja and ors. Vs. The Collector, Thane, Maharashtra and ors.*, AIR 1990 SC 261 has

also held that rules of natural justice are not applicable to legislative action plenary or subordinate. The Honâ??ble Supreme Court in para 23 of the

judgment has held:

23. 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 under Section 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.

40. In *Karnail Singh and another Vs. Darshan Singh and Ors.*, 1995 Supp.(1) SCC 76, the Hon'ble Supreme Court has held that amalgamation of two gram sabhas into one is an administrative decision taken by the authorities in public interest and the Court would not interfere unless the same is vitiated with malafides.

41. The Hon'ble Supreme Court in *Solapur Midc Industries Association and ors. Vs. State of Maharashtra and ors.*, reported in (1996) 9 SCC 621, has held: ¶3. It is not disputed that since the State Government has not yet withdrawn the industrial estate/industrial area concerned from the hold of the Corporation, the provisions of the 1961 Act continue to apply. The Preamble thereof is suggestive of its objects sought to be achieved namely the orderly establishment in industrial areas and industrial estates of industries, and to assist generally in the organisation thereof, and for that purpose to establish the Industrial Development Corporation and for purposes connected with the matters therewith. The purpose of the 1949 Act on the other hand, as is suggestive from its Preamble, is to provide for the establishment of Municipal Corporations with a view to ensure a better municipal government of the cities in which municipal corporations are set up. These being the basic differences as to the ambit of the two statutes, the High Court, in our view, rightly arrived at the conclusion that there was inter se no conflict between the two. There may be certain areas such as provision for civil amenities in which there is identity of purpose but these are ancillary and incidental to the main purpose of the respective two statutes. The suggestion drawn from the Assembly debates, to which our attention has been drawn, while passing the 1961 Act, suggestive of the fact that the industrial estates or industrial areas on ripening were meant to be kept under the purview of the 1961 Act until some civic administration in the form of a Panchayat or Municipality could take over is not supported by any statutory provision available in the respective two Acts. As said before the topics of legislation being different, there was no question of their rubbing against each other because being enacted under two different legislative fields.

42. The Hon'ble Supreme Court in *Nagar Panchayat Kurwai and another v. Mahesh Kumar Singhal and ors.*, reported in (2013) 12 SCC 342, has held that Nagar Panchayat, is a unit of self-government, which is a sovereign body having both constitutional and statutory status and considerable powers

are conferred on it to carry out various schemes for economic development and social justice at the local level.

19. As regards allegations of mala fides, by long established practice, which has received approbation from the authorities of the Hon'ble Supreme

Court, the Court has always refrained from attributing malafides to the legislature. In fact, such a thing is unknown to law. Here, it shall be apt to

reproduce relevant observations as contained in para 36 of the judgment rendered by the Hon'ble Supreme Court in K. Nagaraj vs. State of Andhra

Pradesh, AIR 1985 SC 551, wherein it was observed as under:Â?

36. The argument of mala fides advanced by Shri A.T. Sampat, and adopted in passing by some of the other counsel, is without any basis. The burden

to establish mala fides is a heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive

cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides, the

ordinanceÂmaking A power being a legislative power, the argument of mala Fides is misconceived. The legislature, as a body, cannot be accused of

having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if no reasons

are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a

legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation.

20. In addition to the aforesaid, we otherwise do not find the petition to be maintainable as the same though appears to have been filed on behalf of the

Gram Panchayat, but the authorization letter appended thereto clearly shows that there is no valid resolution passed by the Gram Panchayat in favour

of the petitioner herein.

21. It is more than settled that if the officials of the State do not act upon the resolutions, then the aggrieved, if any, shall only be the Gram Panchayat

and not any individual(s). If the Gram Panchayat is no longer in existence on account of its bifurcation, then a petition can only be filed after

authorization by majority of the people of the area.

22. No doubt, the petitioner has tried to improve its case by supplying authorization document dated 3.1.2021, but the same cannot be considered to be

a valid authorization as the petition in this case was filed much earlier on 21.12.2020 and in such circumstances, there cannot be any ratification of the authorization subsequent to the filing of the petition.

23. In view of the aforesaid discussion, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any, leaving the parties to bear their own costs.