

(2018) 08 UK CK 0208

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 136 Of 2017

Kulvinder Singh Bohra @APPELLANT@Hash State Of Uttarakhand & Others

Date of Decision : 29-08-2018

Acts Referred:

Uttar Pradesh Municipal Corporations Act, 1959 — Section 3, 256
Constitution Of India, 1950 — Article 243Q
Orissa Municipal Act, 1950 — Section 417A

Citation : (2018) 08 UK CK 0208

Hon'ble Judges : Rajiv Sharma, J;Manoj K. Tiwari, J

Bench : Division Bench

Advocate : Rajendra Dobhal, Prince Chauhan, P. C. Bisht

Final Decision : Allowed

Judgement

Rajiv Sharma, J

1. Objections were called as per letter dated 22.09.2017 for inclusion of new area in the existing Municipal Corporation, Dehradun.

2. The petitioner filed objections on 28.09.2017. The petitioner was legitimately expecting that objections called vide tentative notification dated

22.09.2017 will be considered in accordance with law. The purpose of calling objections was to enable the petitioner to project his case for not

including new areas in the existing Municipal Corporation, Manglore. However, surprisingly, without deciding/considering the objections raised by the

petitioner, final notification has been issued on 25.10.2017.

3. The declaration of larger urban area is emphasized under Section 3 of the Uttar Pradesh Municipal Corporations Act, 1959 read with Article 243-Q

of the Constitution of India. Their Lordships of the Honâ??ble Supreme Court in the case of Baldev Singh & others Vs State of Himachal Pradesh

& others reported in SCC 1987 (2) 510 have held that where exercise of power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the principles of natural justice would apply. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. Therefore, before constitution of the notified area under Section 256 of the Act, 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 and would render the notification constituting a particular notified area invalid. In para nos. 4, 5 & 7 of the said judgment, their lordships have held as follows:

4. Appellants' counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area has been constituted. Since Section 256 of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied. Ours is a democratic polity. At every level, from the villages up to the national level, democratic institutions have been introduced. The villages are under Gram Panchayats, urban areas under Municipalities and Corporations, districts are under Parishads; for the State there is a Legislature and for the entire country, we have the Parliament. People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. 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 would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidences of tax and the like.

5. Reliance was placed on two decisions of this Court in support of the appellants' stand that natural justice required an opportunity of being heard

to be extended to the people of the area before the administrative decision to constitute the notified area was taken. The first is the case of S.L.

Kanpoor V Jagmohan and Ors. 1. That was a case where the committee constituted under the Municipal Act was superseded. This Court held that

where the administrative action entails civil consequences, observance of natural justice would be warranted and unless the law excludes the

application of natural justice it should be taken as implanted into the scheme. The other is the case of State of Orissa v Sridhar Kumar Mallik and Ors.,

where the validity of the action taken under Section 417-A of the Orissa Municipal Act in constituting a notified area was being examined. The Court,

referring to the statutory scheme, found : (SCC pp.700-01, para 6)

The extension of the Orissa Municipality Act to an area other than a municipality is a matter of serious moment to the residents of the area. It results

in the provision of amenities and conveniences necessary to civil life and their regulation by a local body. But the Act also provides for the imposition

of taxes of different kinds on the residents. The tax structure does not embody an integrated unified impost expressed in a single tax measure.

Different kinds of taxes are contemplated by the Act. The scheme set forth in Chapter XXX-A of the Act intends that before the Government

extends the operation of the Act to an area under a municipality it must afford an opportunity to the local residents to object to the proposed action.

The objections are submitted to the District Magistrate, who forwards them along with his views to the State Government. The State Government

must take into consideration all the material before it and decide thereafter what should be the precise area to which the Act should be extended, and

indeed whether all the provisions of the Act or only certain specified provisions should be so extended. The possibility of some only of the provisions of

the Act being applied to the notified area is evident from the terms in which the grant of power has been conferred on the State Government. Sub-

section (1) of Section 417-A specifically envisages that when issuing the notification contemplated therein the State Government must decide whether

administrative provision needs to be made for all or any of the purposes of the Act in the area proposed to be notified. Unless the proposal

formulated in the proclamation made under Sub-section (1-a) of Section 417-A is precise and clear, and indicates with sufficient accuracy the area

intended to be notified, and further indicates whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. We do not see how it can be otherwise.

It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision, but the settled position in 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. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been 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. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way.

6. Mr. Thakur for a State advanced an argument that a few interested people were trying to resist the move of the State to constitute the notified area. Once we have held that the requirements of natural justice have not been fulfilled, it is not for us to examine whether the petition before the High Court was the outcome of efforts confined to a small group of the inhabitants of the area. At any rate there is no clear material before us also to support of Mr. Thakur's stand.

7. The appeal is allowed and the impugned notification of March 31, 1982 constituting the particular notified area is quashed. We make it clear that it is open to the State Government to make a fresh notification after complying with the law and this judgment of ours would not stand in the way of the State Government to do so. Parties are directed to bear their own costs.â??

4. Petitioner has also highlighted that the area, which is likely to be included as per tentative notification, constitutes 70% of Forest Area.

5. The State Government should have also taken this aspect into consideration. The Court can take judicial notice of the fact that forest wealth in the

State of Uttarakhand is shrinking. The inclusion of more area in the existing Municipal Corporation, Dehradun would cause harm to environment of the area. The State Government has not denied the specific averments with regard to this aspect in the Counter affidavit.

6. Principles of natural justice are to be taken into consideration while including or excluding any area in the existing local urban area as per Section 3 of the Uttar Pradesh Municipal Corporations Act, 1959. The petitioner has suffered civil and evil consequences since the objection raised by him has not been decided. There is no compliance of the principles of natural justice.

7. Accordingly, the present writ petition is allowed. The impugned order dated 28.10.2017 is hereby quashed and set aside. Respondents are directed to decide the objections raised by the petitioner on 28.09.2017 within three weeks from today and, thereafter, take a fresh decision in accordance with law.