

(2016) 09 AHC CK 0046

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 45176 of 2016

Mohini Sharma

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 3, 3 A, 333, 5

Uttar Pradesh Panchayat Raj Act, 1947 — Section 11 A, 11 B, 11 F, 3

Citation : (2016) 10 ADJ 221 : (2017) AIR(Allahabad) 42 : (2016) 6 AllWC 6318 : (2017) 120 ALR 433 : (2017) 134 RD 658 : (2016) 2 RJ 1681 : (2016) 4 UPLBEC 3378

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Suresh C. Dwivedi and M.C. Chaturvedi, Advocates, for the Petitioner; C.S.C, for the Respondents

Final Decision : Dismissed

Judgement

1. Smt. Mohini Sharma w/o Amar Pal Sharma, r/o Village Khoda, Block Loni, District Ghaziabad, is before this Court for following reliefs:

I. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.7.2016 passed by the respondent no. 3, Commissioner, Meerut Division, Meerut.

II. issue a writ, order or direction in the nature of mandamus directing the respondent-authorities to allow the petitioner to continue to work and discharge her duties as Gram Pradhan, Gram Panchayat Khoda, Block Loni, District Ghaziabad till validly constituted Nagar Palika Parishad with all powers comes in existence.

III. issue a writ, order or direction in the nature of mandamus restraining the respondent-authorities from taking any action in pursuance of the impugned order dated 20.7.2016 and allow the petitioner to work as full fledged Gram

Pradhan, Village Khoda, Block Loni, District Ghaziabad.

IV. issue such other and further writ, order or direction which this Hon''ble Court may deem fit and proper in the nature and circumstances of the present case.

V. award costs of the petition to the petitioner.

2. Brief background of the case, as is emanating from the record, is that petitioner contested elections for the post of Gram Pradhan of Gram Panchayat Khoda, Block Loni, District Ghaziabad in the elections held somewhere in November-December 2015 and in the said elections petitioner was elected as Gram Pradhan and, thereafter, petitioner continued to perform and discharge her duties as Gram Pradhan of the aforesaid Gram Panchayat and it appears that thereafter Nagar Palika Parishad Khoda has been constituted under the provisions of U.P. Municipalities Act, 1916 and at the said point of time the State Government came up with the notification dated 30.3.2015 and at the end of the day Nagar Palika Parishad Khoda Makanpur, Block Loni, District Ghaziabad has come into existence. Petitioner, at the said juncture, preferred Writ Petition (MB) No. 13297 of 2016 [Mohini Sharma & others v. State of U.P. & others] assailing the notification dated 10.3.2016 issued in exercise of the powers under Article 243 (E) and Article 243 (Q) of the Constitution of India read with Section 3 of U.P. Municipalities Act, 1916. The ground of the said challenge was that since the tenure of the petitioners as the Pradhan and Member of the Gaon Sabha has not yet come to an end, the aforesaid delimitation and bringing the area within municipal limits is unconstitutional and consequential order dated 28.4.2016 was also prayed for wherein petitioners have been restrained from exercising financial powers in relation to the said area. The said challenge in question has been considered by the Division Bench and this Court has proceeded to pass the following order;

"Heard Sri H.G.S Parihar learned senior counsel assisted by Sri Sarvesh Kumar Dubey, learned counsel for the petitioners.

This writ petition has raised a two fold challenge one to the notification dated 10.03.2016 issued in exercise of the powers under Article 243(E) and Article 243 (Q) of the Constitution of India read with Section 3 of the U.P. Municipalities Act, 1916 on the ground that since the tenure of the petitioners as the Pradhan and Member of the Gaon Sabha has not yet come to an end, the aforesaid delimitation and bringing of the area within Municipal limits is unconstitutional.

The second ground raised is that by virtue of such a notification a consequential order that has been passed on 28.04.2016 restraining the petitioners from exercising financial powers in relation to the said area is also ultravires the provisions of the Act and is equally unconstitutional.

To substantiate this submission, learned counsel for the petitioner has invited attention of the Court to the application dated 07.05.2016 filed before the District Magistrate a copy whereof is annexure no. 6 to the writ petition where

the actual grievance of the petitioners have been entailed. It has been alleged therein that certain development work has already been carried out and as a result of the aforesaid action taken by the respondent, the payment for the said work already executed before has been withheld and therefore, the same deserves to be redressed.

We have heard learned counsel for the petitioners as well as the learned Standing Counsel for the State-respondent nos. 1 to 4.

The first ground taken with regard to the impugned notification dated 10.03.2016 cannot be accepted inasmuch as the constitutional powers in order to notify an already existing local area as a municipal area is vested in the respondent under Article 243 Q read with Section 3 of the U.P. Municipalities Act, 1916. Since the power to do so is available we have not been able to find any error in the issuance of the said notification so as to strike down the same.

The major issue is with regard to the functions already undertaken and the development work carried out prior to any such action which is impugned herein particularly the orders relating to the operation of the financial accounts dated 28.04.2016. From a perusal of the application dated 07.05.2016, it appears that the petitioners allege to have carried out development work on five counts which are mentioned in the said applications, the payment whereof has not yet been made on account of the intervening order dated 28.05.2016.

In order to resolve this crisis, which clearly relates to the exercise of financial powers on account of such declaration of local area as being Nagar Palika Parishad, we find that under the U.P. Municipalities Act, 1916, the prescribed authority has been defined under Section 2 (17)(ii) as follows:-

(17)(ii)"Prescribed authority" means an officer or a body corporate appointed by the State Government in this behalf by notification in the Official Gazette and if no such officer or body corporate is appointed, the Commissioner:

Consequently this being a matter of financial administration the work already carried out under the auspices of the Gaon Sabha therefore has to be looked into, and if the work has been carried out in accordance with rules, then the issue with regard to the payments which are to be made in relation thereto has to be resolved as according to the petitioners the work has been actually carried out.

We therefore, find that it would be appropriate that the Commissioner of the division who is the prescribed authority of Nagar Palika Parishad can after calling for comments from his subordinate officers including the District Magistrate proceed to examine the said claim of the petitioners as it requires to be resolved if the expenses have been actually incurred. Consequently the payment will have to be released if the development work has been carried out in accordance with rules.

The Commissioner Meerut respondent no.2 shall therefore now proceed to deal

with the matter in view of what has been stated above and issue necessary instructions or pass appropriate orders, if it is within his jurisdiction in relation thereto and inform the Gaon Sabha concerned of which the petitioner no.1 claiming herself to be elected Gram Pradhan.

Needless to mention that the elections of the Gaon Sabha were held very recently in the year 2015. In such a situation, this financial administration in this peculiar circumstances, therefore, requires to be resolved. The Commissioner shall pass orders expeditiously and preferably within three weeks" from the date of production a certified copy of this order.

In the event Commissioner finds that the matter has to be brought to the notice of the State Government for resolution of any such dispute in the absence of any jurisdiction, then the same shall be dispatched forthwith and the State Government will also be obliged to take a decision within the said period.

With these directions, the writ petition is disposed off."

3. Pursuant to the order passed by this Court the claim in question has been considered and same has been turned down by informing the petitioner that once the provisions of U.P. Municipalities Act, 1916 has come into force, then till the committee in question has not been constituted, the ad-hoc committee would function. Petitioner at this juncture is assailing the validity of the aforementioned order before this Court.

4. Sri Amit Saxena, Advocate, duly assisted by Sri Anubhav Shukla, Advocate, submitted before this Court that merely because a notification in question has been issued for constitution of Nagar Palika Parishad, same would not automatically ipso facto curtail the tenure for which the petitioner has been elected and, in view of this, this Court should come to rescue and reprieve of the petitioner and permit the petitioner to complete her tenure as Gram Pradhan.

5. Learned Standing Counsel, on the other hand, has contended that once the Gram Panchayat has already come to an end after establishment of Nagar Palika Parishad Khoda, then by no stretch of imagination, petitioner, who has been elected as Gram Pradhan, can be permitted to continue and action, that has been so undertaken, is strictly in accordance with the law, as such, no interference be made by this Court and writ petition is liable to be dismissed.

6. After respective arguments have been advanced the factual situation that is so emerging before us is that Part IX has been inserted in the Constitution of India by the Constitution (73rd) Amendment Act, 1992 and the underlying purpose of Part IX is to create democratic decentralisation for ensuring that traditionally marginalised groups should progressively gain foothold in local self government. Article 243-A deals with the Gram Sabha, Article 243-B deals with the Constitution of Panchayats, Article 243-C deals with the Composition of Panchayats, Article 243-D deals with the Reservation of Seats and Article 243-E deals with Duration of Panchayats etc. in following terms;

"243-E. Duration of Panchayats, etc. - (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed--

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved."

7. Article 243-K deals with the Elections of Panchayats in following terms;

"243-K. Elections to the Panchayats. - (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

(2) Subject to the provisions of any law made by the Legislature of a State the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

(3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

8. Part IX-A has also been introduced by means of Constitution 74th Amendments, 1992 and the purpose and objectives of IX-A is to create

hierarchical structure of elected local bodies, democratic decentralisation, greater accountability between citizens and State apparatus and empowerment of weaker sections.

9. Article 243-Q deals with Constitution of Municipalities in following terms;

"243-Q. Constitution of Municipalities.

- (1) There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the Governor 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 non agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

10. Article 243-R deals with the Composition of Municipalities in following terms;

"243-R. Composition of Municipalities.

- (1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide-

(a) for the representation in a Municipality of-

(i) persons having special knowledge or experience in Municipal administration;

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within the Municipal area;

(iv) the Chairpersons of the Committees constituted under clause (5) of article 243-S:

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality."

11. Article 243-S deals with the Constitution and composition of Wards Committees, etc. and Article 243-W deals with the powers, authority and responsibilities of Municipalities etc., as follows;

"243-W. Powers, authority and responsibilities of Municipalities, etc. - Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to ----

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule."

12. Article 243-ZA deals with the Elections to the Municipalities and Article 243-ZF deals with the Continuance of existing laws and Municipalities.

13. On these constitutional provisions, that have been noted above, what we find in the present case is that as far as petitioner is concerned at the point of time when she has been elected as Gram Pradhan, her elections in question was governed under the provisions of U.P. Panchayat Raj Act, 1947. Section 3 of U.P. Panchayat Raj Act, 1947 deals with the Gram Sabha that proceeds to make a mention that State Government shall by notification in the Official Gazette establish a Gram Sabha for a village or group of villages by such name as may be specified and she has been elected to represent such body for five years.

14. Chapter III-A deals with the Gram Panchayats and provides under Section 11-A that there shall be a Pradhan of the Gram Panchayat, who shall be the chairperson thereof. Section 11-B deals with the Election of Pradhan, which is as follows;

"11-B. Election of Pradhan - (1) The Pradhan of the Gram Panchayat shall be elected by the persons registered in the electoral rolls for the territorial constituencies of the Panchayat area from amongst themselves.

(2) If at any general election to a Gram Panchayat, the Pradhan is not elected, and less than two-thirds of the total number of members of Gram Panchayat are elected, the State Government or an officer authorised by it in this behalf may, by order, either appoint -

(i) an Administrative Committee consisting of such number of persons qualified to be elected as members of the Gram Panchayat, as it may consider proper; or

(ii) an Administrator

(3) The members of the Administrative Committee or the Administrator shall hold office for such period not exceeding six months as the State Government may specify in the order referred to in sub-section (2).

(4) On the appointment of an Administrative Committee or an Administrator under sub-section (2), the person, if any, chosen as Pradhan or member of the Gram Panchayat before such appointment shall cease to be such Pradhan or member, as the case may be, and all powers, functions and duties of the Gram Panchayat, its Pradhan and Committees shall vest in and be exercised, performed and discharged by such administrative committee or the Administrator, as the case may be.

(5) The Administrative Committee or the Administrator shall be deemed to be duly constituted Gram Panchayat for the purposes of this Act :

Provided that if at any time after the appointment of the Administrative Committee or the Administrator under sub-section (2) the State Government is satisfied that there is no difficulty in duly constituting the Gram Panchayat, the State Government may, notwithstanding that the period for which the Administrative Committee or the Administrator had been appointed has not expired, direct the State Election Commission for holding the elections for constituting the Gram Panchayat.

(6) Except as otherwise provided in this Act, the term of office of Pradhan shall be coterminous with the term of the "Gram Panchayat".

15. Section 11-F deals with the Declaration of Panchayat area and Section 12 deals with the Gram Panchayat. Thus from the provisions, quoted above, this much is clear that there has to be constituted for every panchayat area a Gram Panchayat which would be a body corporate and shall consist of a Pradhan. Gram Panchayat, unless sooner dissolved would continue for five years from the date appointed for its first meeting and no longer.

16. In reference of authority conferred under Article 243-Q of the Constitution read with Sections 3 and 3-A of U.P. Municipalities Act, 1916, for every transitional area and urban area there has to be a municipality. Sections 3 and 3-A of the U.P. Municipalities Act, 1916 are extracted below;

"3. Declaration etc. of transitional area and smaller urban area. - (1) Any area specified by the Governor in a notification under clause (2) of Article 243-Q of

the Constitution with such limits as are specified therein to be a transitional area or a smaller urban area, as the case may be.

(2) The Governor may, by a subsequent notification under clause (2) of Article 243-Q of the Constitution, include or exclude any area in or from a transitional area or a smaller urban area referred to in sub-section (1), as the case may be.

(3) [The notifications referred to in sub-sections (1) and (2) shall be subject to the condition of the notification being issued after the previous publication required by Section 4 and notwithstanding anything in this section, no area which is, or is part of, a cantonment shall be declared to be a transitional area or a smaller urban area or be included therein under this section.]

Section 3 of the Act which deals with the functions, powers and duties of the Municipal Council, provides that any area can be included in the existing area of Municipal Council by a subsequent notification under Article 243-Q but the same shall be subject to the formalities to be observed under Section 4 of the Act.

3-A. Municipality for every transitional area and smaller urban area. - [(1) A municipality constituted under clause (1) of Article 243-Q of the Constitution in accordance with Part IX-A thereof shall,-

(a) for every transitional area, be known as the Nagar Panchayat;

(b) for every smaller urban area be known as the Municipal Council.]

(2) Every Nagar Panchayat or Municipal Council constituted under sub-section (1), shall be a body corporate.

(3) Notwithstanding anything in sub-section (1),-

(a) every Municipal Board existing immediately before the commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994, shall [from such commencement and until the first constitution of the Municipal Council under this Act as amended by the said Act] be deemed to be a Municipal Council under the Act;

(b) every notified area committee constituted under Section 338 or Town Area Committee constituted under the Uttar Pradesh Town Areas Act, 1914, as it stood immediately before the commencement of the Act referred to in clause (a), shall [from such commencement and until the first constitution of the Nagar Panchayat under this Act, as amended by the Act referred to in clause (a)] be deemed to be a Nagar Panchayat under this Act.]"

17. Section 5 deals with the effect of including area in transitional area or smaller urban area, as follows;

"5. Effect of including area in [transitional area or smaller urban area]. - [Whereby a notification referred to in sub-section (2) of Section 3 the Governor includes any area] in a [transitional area or smaller urban area], such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders,

directions, issued or made under this or any other enactment and in force throughout the [transitional area or smaller urban area], at the time immediately preceding the inclusion of the area."

18. A bare perusal of the Section 5 of U.P. Municipalities Act, 1916, would go to show that whereby a notification referred to in sub-section (2) of Section 3 the Governor includes any area in a transitional area or smaller urban area, such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions, issued or made under this or any other enactment and in force throughout the transitional area or smaller urban area, at the time immediately preceding the inclusion of the area. Thus the affairs of the same will have to be governed under the provisions of U.P. Municipalities Act, 1916 and it may be true that Pradhan in question has been elected for a period of five years but once the very identity of the Gram Panchayat in question has been lost on account of inclusion of such area, then the provisions of U.P. Panchayat Raj Act, 1947, would not at all operate and same will have to be governed under the provisions of the U.P. Municipalities Act, 1916. Any other view would tantamount to diluting the provisions of Section 5 of U.P. Municipalities Act, 1916.

19. Apex Court in the case of State of Maharashtra v. Deep Narain Chavan, 2002 (10) SCC 565, while considering the arguments advanced that once Municipal Council is constituted, then its duration shall be five years in accordance with constitutional provisions contained in Article 243-O, has ruled while considering the expression "unless sooner dissolved under any law for the time being in force", that the moment Corporation is constituted in accordance with law, the elected Municipal Council would cease to function.

20. Article 243-E deals with duration of Panchayat, Article 243-U deals with duration of Municipalities and both the constitutional provisions share in common the expression "unless sooner dissolved under any law for the time being in force". Once Governor takes a call for constitution of municipality in exercise of authority conferred under the constitution namely Article 243-Q that specifically refers to three type of municipalities i.e. Nagar Panchayat for transitional area, a Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area, the moment declaration is made under Article 243-Q read with Section 3 of the U.P. Municipalities Act, 1916, by the State Government, then the said municipal body would be a sovereign body having both constitutional and statutory status. As already noted in the earlier part of the judgement, the constitutional as well as statutory provisions pertaining to "Panchayats" would go to show that object of Part IX of the Constitution was to introduce the panchayat system at grass root level and strengthen the panchayat system by giving uniform constitutional vibrant units of administration in the rural area so that there can be rapid implementation of rural development sector. Once there is complete transformation from rural area to urban area having regard to population of area, the density of population therein, the revenue generated from local administration, the percentage of employment in non-agricultural activities,

the economic importance and other factors, made by the State Government, then the said area is denoted in the notification would be out from the purview of Part IX of the Constitution and the provisions of U.P. Panchayat Raj Act, 1947 and the affairs of the said area treating the same to be urban area would be covered by the provisions of Part IX A of Constitution along with the provisions of U.P. Municipalities Act, 1916.

21. For ready reference Section 333 of U.P. Municipalities Act, 1916 is quoted below;

"333. Exercise by District Magistrate of [Municipality"s] power pending establishment of [Municipality]. - When a new municipality is created under this Act, the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, may until a [Municipality] is established, exercise the powers and perform the duties and functions of the [Municipality], and, he or it shall, for the purposes, aforesaid be deemed to be the [Municipality].

Provided always that the District Magistrate or such other officer, or committee, or authority shall, as early as possible, make preliminary arrangements for the holding of first elections and generally of expediting the assumption by the [Municipality] of its duties when constituted."

22. Section 333 proceeds to mention that when a new municipality is created under this Act, then a committee has to be constituted and the said committee would look after the affairs of the said municipality.

23. Once the Gram Panchayat in question has ceased to exist and provisions of the Part IX of the Constitution and U.P. Panchayat Raj Act, 1947 cannot be further pressed into service and declaration of transitional area and smaller urban area has been made, a new municipality has been constituted to look after the affairs of the new body, then under Section 333 of U.P. Municipalities Act, 1916, headed by the District Magistrate there has to be a Committee to look after the affairs of the Municipality and in the said direction once the action has been taken, wherein petitioner has also been co-opted as one of the Member of the said Committee, then there is no infirmity in the same.

24. Writ petition lacks merit and same is dismissed, accordingly.