

(2022) 09 UK CK 0036
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 62 Of 2022

Monika	Vs	APPELLANT
State Of Uttarakhand And Others		RESPONDENT

Date of Decision : 09-09-2022

Acts Referred:

Uttarakhand Municipalities Act, 1916 — Section 4(2)
Constitution Of India, 1950 — Article 243Q

Citation : (2022) 09 UK CK 0036

Hon'ble Judges : Vipin Sanghi, CJ; Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : Siddhartha Singh, B.P.S. Mer, Pankaj Sanwal

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1) The petitioner has preferred the present writ petition to assail that part of the Notification dated 01.09.2021, by which Village Saliyer Salhapur, Tehsil Roorkee, District Haridwar, was included in the proposed Nagar Panchayat.

2) Article 243Q of the Constitution of India stipulates as under:

"243Q. 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."

3) In terms of the aforesaid Article, the impugned Notification has been issued including Village Saliyer Salhapur in the Nagar Panchayat area. The petitioner is aggrieved by inclusion of the aforesaid village in the Nagar Panchayat area.

4) The case of the petitioner is that the petitioner had objected to the proposed inclusion of the aforesaid village in the Nagar Panchayat area, in the light of Government Order dated 10.09.1986, on the premise that 60% of its population is engaged in agriculture. The objection of the petitioner was examined by a Committee of officers, which was chaired by the District Magistrate, Haridwar. The said Committee found favour with the objections raised by the petitioner, and recommended exclusion of the aforesaid village from the proposed Nagar Panchayat area. In spite of said recommendation, the impugned Notification dated 01.09.2021, included village Saliyer Salhapur as a part of Nagar Panchayat area by which petitioner is aggrieved.

5) Upon issuance of show cause notice, the respondent-State has filed its counter-affidavit. In paragraph 8 of the counter-affidavit, the respondents have stated as follows:

"8. That the contents of paragraph no. 6 of the said petition are admitted in so far as they are matter of record. It is imperative to state that all the objection received in furtherance of interim notification dated 26.02.2021, were duly disposed of by the Committee under the Chairmanship of District Magistrate, Haridwar, which was duly forwarded to the State Government. While disposing of the said objections the Committee was of the opinion that as per the standards laid down in the G.O. dated 10.09.1986, the population of the proposed area was as per the standards but 40% of the residents of Village Saliyer Salhapur were engaged in jobs and business and remaining 60% of the residents were still dependent on agriculture, hence for the said reason the standards laid down in the above G.O. could not be fulfilled. Therefore, the committee submitted its opinion that the objections are liable to be admitted. However, the matter was placed before the Hon'ble Cabinet, wherein due relaxation of the standards laid down in G.O. dated 10.09.1986 was duly granted and ultimately impugned notification dated 01.09.2021 was issued by the State Government for creating the Nagar Panchayat, Rampur. The petitioner cannot be granted benefit of judgment dated 23.07.2019, passed by the Hon'ble High Court because the

operation of the said judgment and order has been stayed by the Hon'ble Supreme Court vide order dated 23.09.2019, passed in SLP No. 22176/2019, 22348/2019 and 22227/2019. Copy of order dated 23.09.2019, passed by the Hon'ble Supreme Court in SLP No. 22176/2019, 22348/2019 and 22227/2019 is being marked and filed as Annexure No. A-2 to this affidavit."

6) The submission of Mr. Singh, learned counsel for the petitioner, is that the petitioner's objection has not been considered and the only ground taken by the respondents in their counter-affidavit is that the Cabinet has considered the matter, and in pursuance of the Cabinet decision, the impugned Notification dated 01.09.2021 has been issued for creation of the Nagar Panchayat, Rampur.

7) Learned counsel for the petitioner has also placed reliance on Section 4(2) of the Uttarakhand Municipalities Act, 1916, which provides for inviting of objection or suggestion in writing to the draft proposed, before notifying any area, inter alia, as a Nagar Panchayat.

8) The submission of the petitioner is that the purpose of Section 4(2) is to enable objections to be invited and it is, therefore, necessary that the objections are also considered. However, in the present case, according to the petitioner, the petitioner's objections have not been considered.

9) We heard learned counsels, and we do not find any merit in the present petition.

10) Perusal of the counter-affidavit shows that the petitioner's objections, which were examined by the Committee, were considered by the Cabinet, which decided to include the petitioner's village in the Nagar Panchayat, Rampur. There is nothing to suggest that the petitioner's objection, or even the recommendation made by the Committee, chaired by the District Magistrate, Haridwar, were bound to be accepted by the Government. The decision has been taken at the highest level, i.e., in a Cabinet meeting, and it is the prerogative of the State Government to create, inter alia, another Panchayat, while including a particular village. We are, therefore, not inclined to interfere with the impugned Notification.

11) The Writ Petition (PIL) is, accordingly, dismissed.

Stay Application (IA No. 01 of 2022) also stands disposed of.