
(2016) 08 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 21 of 2016

Narendra Singh Rana

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Constitution of India, 1950 — Article 243Q

Uttar Pradesh Municipalities Act, 1916 — Section 4, Section 8AA

Citation : (2017) AIR(Uttaranchal) 3

Hon'ble Judges : K.M. Joseph, CJ. and V.K. Bist, J.

Bench : Division Bench

Advocate : Mr. B.D. Kandpal, Deputy Advocate General with Mr. Anil K. Joshi, Addl. Chief Standing Counsel, for the State of Uttarakhand in Writ Petition (PIL) Nos. 21 and 133 of 2016; Mr. B.D. Kandpal, Deputy Advocate General with Mr. Anil K. Joshi, Addl. Chief Stan

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J. (Oral) - Since these writ petitions raise common questions of law, we are disposing of the same by the following common judgment.

2. Petitioners in Writ Petition (M/S) No.133 of 2016 and Writ Petition (PIL) No. 21 of 2016 call in question notification issued purporting to notify Village Panchayat Nanakmatta as Nagar Panchayat located in District Udham Singh Nagar. Writ Petition (PIL) No. 154 of 2014, on the other hand, relates to another area located in District Pauri Garhwal. The petitioner therein challenges Notification dated 08.02.2014, notifying Village Panchayat Satpuli as Nagar Panchayat and he seeks to exclude the said Village.

3. We heard Mr. Kishore Kumar, learned counsel appearing for the petitioner in WPIL No. 21 of 2016 and WPMS No. 133 of 2016. We also heard Mr. Navnish Negi, learned counsel appearing for the petitioner in WPIL No. 154 of 2014. Besides, we also heard Mr. B.D. Kandpal, learned Deputy Advocate General and Mr. Anil K. Joshi, learned Addl. Chief Standing Counsel for the State of

Uttarakhand.

4. The petitioner, in Writ Petition (M/S) No. 133 of 2016, was elected as the Pradhan (President) of the Village Panchayat Nanakmatta. She was elected on 28.06.2014. Her elected term would normally have come to an end on 28.06.2019. The petitioner, in the public interest case, namely, Writ Petition (PIL) No. 21 of 2016, also calls in question the notification of the area as Nagar Panchayat. It is the case of Mr. Kishore Kumar, learned counsel for the petitioner that the Chief Minister on 03.12.2012 declared that the Village Panchayat Nanakmatta will be made Nagar Panchayat. On 21.05.2013, proposal was sent by the Tehsildar and the S.D.M. to the District Magistrate to declare the Village Panchayats, involved in both these cases, as Nagar Panchayats. Subsequently, apparently, under Section 4 of the Uttar Pradesh Municipalities Act, 1916, which is applicable also in the State of Uttarakhand, a notification was issued. According to the petitioner, objections were sent. It is the case of the petitioners that there is no warrant for notifying the Panchayat in question as a Nagar Panchayat. Reliance is placed primarily on order passed by the State of Uttar Pradesh in the year 1986. In the same, it is contended that various conditions are provided for declaring a Nagar Panchayat. It is contended that the population must be at least 10,000 in the hilly area and 20,000 in the plain area for an area to be notified as Nagar Panchayat. Further, another criterion stipulated in the Government Order is that annual income should be not less than Rs. 30,000/-. More than 75 percent of the people in the area should not derive their income from agriculture. In other words, more than 75 per cent should derive the income from sources other than agriculture. According to the learned counsel for the petitioner, the said Government Order issued in the year 1986, which is applicable in the State of Uttarakhand, has been observed in its breach in the notification of the Panchayats in question. It is further submitted that the petitioner, in Writ Petition (M/S) No. 133 of 2016, was elected from the Scheduled Tribe Community. The objections have not been considered, decided or communicated to the parties. Mr. Kishore Kumar, learned counsel for the petitioner also sought to draw support from the judgment of the Hon'ble Apex Court in the case of Kamal Jora v. State of Uttarakhand and another reported in (2013) 9 SCC 396. It is the submission of Mr. Kishore Kumar that the actual population of the area in question is less than 10,000 and it is only little over 5500. Consent of the people of the area has not been obtained and it is without the consent of the people of the area that the notification has been done.

5. Per contra, it is submitted on behalf of the official respondents that the objections were considered; law was observed; it is a developed area; the population in the year 2011 was 8,478; there are branches of State Bank of India, Bank of Baroda, Bank of Patiala; there are two Inter Colleges; there is a Girls Degree College; there is a Junior High School located in the area; there is a Government Hospital; there is also a Veterinary Hospital, a Bus Station; there is Nanakmatta Gurdwara, which is a very famous Gurdwara. Therefore, after following the law, the authorities have notified the area.

6. Mr. Navnish Negi, learned counsel appearing on behalf of the petitioner in other writ petition submitted that Village Satpuli has been notified as a Nagar Panchayat. He would also contend that Government Order dated 10.09.1986 has been violated; that the people of the area depend on agriculture predominantly. He would also draw our attention to proviso of Article 243-Q of the Constitution of India. He would further submit that, actually, though it is stated in the counter affidavit that objections have been considered, a perusal of the information received under the Right to Information Act, produced as Annexure No. 4, would show that what is relevant is that no objections were received within time. Therefore, this is a contradiction and this shows that without considering any of the objections, the area has been notified as Nagar Panchayat.

7. The stand of the official respondents is that it is a developed area. The objections were received. The information, no doubt, was sought by somebody else and the notification is defended.

8. By the 73rd Amendment of the Constitution, the Parliament, in its constituent capacity, amended the Constitution and inserted various provisions relating to the local self-governing institutions, be it Panchayat, Nagar Panchayat, Municipal area, Municipality or larger Urban Body or Corporation. The intention behind the amendment was to strengthen the Government at the grass-root level; to provide, inter alia, that elections take place at stipulated and regular intervals; devolution of powers to the local bodies and, in the said manner, fortify democracy at the grass root level. It is contemplated that the local bodies would be armed with powers to carry out various mandatory and discretionary duties, which are provided at various levels. The different levels of local governance were envisaged. We are concerned in these two cases with Municipalities. Part IXA of the Constitution provides for the Municipalities. Article 243-P(e) defines Municipality as an institution of self-government constituted under Article 243-Q. It is also necessary to notice that the population has been defined in Article 243-P(g). It reads as follows:

"243-P(g) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published."

9. Municipal area is defined as the territorial area of the Municipality, which is notified by the Governor. Thereafter, Article 243-Q provides for constitution of the Municipalities. It reads as follows:

"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."

10. Following this amendment, the Legislature made suitable changes in the Uttar Pradesh Municipalities Act, 1916 to implement the amendments brought out in the Constitution. Section 3 of the Act, as amended, reads as follows:

"3. Declaration etc. of transitional area and smaller urban area.-

(1) The Governor may, having regard to the population of any local area, the density of the population therein, the revenue generated or local administration, the percentage of employment in nonagricultural activities, the economic importance or such other factors as he may deem fit, by notification in the official gazette,-

[(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 notification referred to in subsections (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."

11. Section 3 A reads as follows:

"3-A. Municipality for every transistional 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 U.P. 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."

12. It is further necessary to advert to Section 4.

It reads as follows:

"4. Procedure preliminary to notification.-(1) Before the issue of a notification under Section 3 the [Governor] shall publish in the official Gazette [and in a paper, approved by it for purposes of publication of public notices, published in the district or, if there is no such paper in the district, in the division in which the local area covered by the notification is situate] and cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned, a draft in Hindi of the proposed Notification along with a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice; and

(2) The [Governor) shall, before issuing the notification, consider any objection of suggestion in writing which it receives from any person, as respect of the draft, within the period stated."

13. Equally important is Section 5, which provides as follows:

"5. Effect of including area in [transitional area or a smaller urban area].-[Where by a Notification referred to in sub-section (2) of Section 3, the Governor includes any area in a [transitional area or a 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 a smaller urban area] at the time immediately preceding the inclusion of the area."

14. Therefore, reading Article 243-Q along with the provisions of the Municipalities Act, the following result is inevitable. For constituting an area into a Nagar Panchayat, the Government is obliged to follow the procedure laid down in Section 4 of the Municipalities Act. Section 4 contemplates preliminary procedure to issue notification. The notification must be published not only in the Gazette but also in the newspaper as provided therein. Objections are to be invited. The objections, which are received within the time, are to be considered. If after considering the objections, it is found fit that preliminary notification is to

be carried further, it should be so notified under Section 3. It is also at this juncture necessary to notice that a Nagar Panchayat is also a Municipality, meaning it is an institution of self-government. It is meant for a transitional area. Under Article 243-Q, the transitional area is an area in transition from a rural area to an urban area. A Municipal Council is intended for a smaller urban area. The Municipal Corporation is a still larger urban area and all these three are Municipalities of different grades. Sub-Article 2 of Article 243-Q provides for the criteria on the basis of which Governor is to act before he specifies an area by public notification to be a Nagar Panchayat, a Municipal Council or a Municipal Corporation. The criteria, which is included in sub Article 2, are 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 deems fit. It is the same criteria, which has found reflection in Section 3 of the Act.

15. We may straight away deal with one argument raised by Mr. Navnish Negi based on the proviso to Article 243-Q. His argument is that the municipal service being provided or proposed to be provided is a relevant consideration as contemplated in the proviso and no municipal service has been provided in the area. We are afraid that the contention of the learned counsel is based on a misapprehension of the provisions of the proviso. What the proviso contemplates is prohibition against constituting a Municipality in any 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. So when any area is deemed to be notified as an industrial township, such an area cannot be notified as a Nagar Panchayat, Municipal Council or Municipal Corporation. This is the purport of the said proviso.

16. The next contention, which we have to consider, is the case of Mr. Kishore Kumar that the petitioner was not given opportunity of being heard. In this regard, learned counsel for the petitioner sought to draw sustenance from the judgment of the Hon"ble Apex Court in the case of Kamal Jora v. State of Uttarakhand and another reported in (2013) 9 SCC 396. The facts in that case, which incidentally arose from this Court, are set out in paragraph nos. 2, 3 & 4. They read as follows:

"2. The relevant facts very briefly are that the appellant was elected as the Chairman of the Municipal Council, Haridwar, in May, 2008. When he was functioning as the Chairman of the Municipal Council, Haridwar a notification was issued on 20.05.2011 by the Government of Uttarakhand notifying that the Governor of Uttarakhand in exercise of powers under Section 3(2) of the Uttar Pradesh Municipal Corporations Act, 1959 (for short "the Act") as applicable in Uttarakhand read with Article 243-Q(2) of the Constitution and Section 8-AA of the Act has dissolved the Municipal Council, Haridwar, and appointed the District

Magistrate, Haridwar, as Administrator for administering the area of the Municipal Corporation, Haridwar.

3. The appellant filed Writ Petition No.1031 of 2011 on 20.05.2011 in the High Court of Uttarakhand, challenging the aforesaid notification mainly on the ground that no opportunity of hearing was given to the Municipal Council, Haridwar before the notification was issued and the learned Single Judge of the High Court who heard the writ petition held in his order dated 09.06.2011 that the dissolution of the Municipal Council, Haridwar was done and the Administrator was appointed to administer the areas of Municipal Corporation, Haridwar under Section 8-AA of the Act without affording any opportunity of hearing or a show cause to the Municipal Council and hence the notification dated 20.05.2011 was in clear violation of the Constitution of India. By the order dated 09.06.2011, the learned Single Judge, therefore, allowed the writ petition and quashed the notification dated 20.05.2011 and directed the District Magistrate, Haridwar to handover the charge forthwith to the elected representatives of the Haridwar Municipality.

4. Aggrieved, the State of Uttarakhand filed Special Appeal No.104 of 2011 before the Division Bench of the High Court contending that the up gradation of the Municipal Council, Haridwar to Municipal Corporation, Haridwar, was done by the State Government in accordance with the mandate in Article 243-Q of the Constitution and the dissolution of the Municipal Council, Haridwar was merely a consequence of such an up gradation and hence no show cause or opportunity of hearing was required to be given to the Municipal Council, Haridwar before the dissolution and before appointment of an Administrator to administer the areas of the Municipal Corporation, Haridwar. The Division Bench of the High Court in its judgment dated 23.06.2011, however, held that Section 8-AA of the Act does not provide for automatic dissolution of the Municipal Council on up gradation to a Municipal Corporation and since automatic dissolution of a Municipal Council has not been provided in the law, an opportunity of hearing should have been given to the persons likely to be affected by dissolution of the Municipal Council. The Division Bench of the High Court, therefore, upheld the order dated 09.06.2011 of the learned Single Judge and dismissed the appeal but on the prayer of the learned Advocate General stayed the operation of the order dated 09.06.2011 of the learned Single Judge for a period of three weeks."

17. Thereafter, it appears that there was a public notice issued and hearing was conducted and appellant's objections were found to be meritless and notification was issued. Thereafter, the contentions, which were taken, included the contention that under Article 243-Q(1) of the Constitution, Municipality must be given opportunity of being heard. Even otherwise, civil consequences were relied on, as flowing from the decision in question and reference was made to various decisions in this regard. We notice that the Court found that opportunity was given and the matter was considered and the appeal was dismissed. We called for the judgment of the Division Bench of this Court. This Court, inter alia, held

as follows:

"7. A look at the said Section would make it amply clear that after a Municipal Council is converted into a Municipal Corporation, the Municipal Council or the persons composing the Municipal Council, chosen by direct election, do not immediately cease to exist in law. In the event State Government is of the opinion that it is expedient to dissolve such Municipal Council, it may do so. Therefore, the law governing the field clearly says that upon a Municipal Council being upgraded to a Municipal Corporation, Municipal Council would not automatically stand dissolved. The law gives power to the State Government to dissolve such a Municipal Council. Therefore, power to dissolve a Municipal Council, as granted by Section 8-AA of the said Adhiniyam, is power referred in Article 243-U(1) by the words, "unless sooner dissolved under any law for the time being in force". In the event dissolution is effected in exercise of such power, as it appears to us, Proviso to sub-Article (1) of Article 243-U applies and it becomes obligatory to give a reasonable opportunity of being heard before such power is exercised.

8. In the event an action is fait accompli, then giving of an opportunity of hearing becomes a mere formality. If an action is such that the law regards the same as final and cannot be altered, the action becomes fait accompli, resulting in opportunity of hearing against such action a mere formality. In the instant case, under Section 8-AA of the said Adhiniyam, Government is required to express an opinion that it is expedient to dissolve the Municipal Council, which has been upgraded. The question is whether such an opinion is fait accompli, that giving of hearing before expression of such opinion becomes a mere formality. Therefore, the one and the only question is whether the opinion of the Government, as may be expressed in terms of Section 8-AA of the said Adhiniyam, is or is not fait accompli? In the event it is fait accompli, then giving a reasonable opportunity of hearing would become academic and mere formality.

9. A State of a democratic nation, ruled by law, is bound to be fair and just in every aspect. In the name of expressing opinion, it cannot do what is, otherwise, barred by the Constitution, namely, act arbitrarily. The State, in terms of the law governing the field, is required to opine that instead of allowing the Municipal Council to continue, when the Municipal Council has been upgraded to a Municipal Corporation, it would be expedient to dissolve the Municipal Council. It is a requirement in law for such a State to hold out before expressing such an opinion that the same is expedient, and to establish that the opinion is just, it is required to give hearing to those against whom such an opinion is likely to be given. In the circumstances, the conclusion would be that the opinion, referred to in Section 8-AA of the said Adhiniyam, cannot be given without hearing, nor the same can be treated as fait accompli, that hearing would become a mere formality. In the matter of expressing an opinion of the nature, as called for in the said Section, it is obligatory on the part of the State to ascertain whether it is expedient to do so, and in that regard, it is required to consider many a things

and, accordingly, there is no just reason why it should not take into consideration the views, that may be expressed by persons against whom the opinion is to be expressed, by giving them an opportunity of hearing. It is true that in Section 8-AA of the said Adhiniyam, there is no provision for giving an opportunity of hearing. It is settled law that when a thing, which is otherwise permissible, to bring the same to an end, the persons likely to be affected thereby are required to be given an opportunity of hearing.

10. We are also of the view that Article 243-Q, which authorizes up gradation of a Municipal Council to a Municipal Corporation, does not contemplate giving of an opportunity of hearing before a decision to do so is taken and, accordingly, when steps are taken to make such up gradation, no hearing is required to be given, but when, as a consequence of such up gradation, a Municipal Council is to be dissolved, unless the law, for the time being in force, provides that such up gradation automatically dissolves the Municipal Council, which has been upgraded to a Municipal Corporation, the said Municipal Council is entitled to an opportunity of hearing and the same is sine qua non for effecting dissolution of such a Municipal Council and that appears to be the mandate of Article 243-U of the Constitution."

18. We must notice that this judgment was essentially premised on provisions contained in Section 8-AA of the Uttar Pradesh Municipal Corporations Act, 1959. The said provision reads as follows:

"8-AA. Temporary provisions for the constitution of Corporation and administration of area notified as City. -(1) [Where any area has been specified to be a larger urban area under clause (2) of Article 243-Q of the Constitution] and the State Government is of opinion that until the due constitution for such area under [the Constitution], it is expedient so to do, then the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order direct that -

(a) [the Municipal Council] or any other local authority constituted for exercising jurisdiction in such area shall, with effect from such date as may be specified in the said order, hereinafter in this section referred to as "specified date", stand dissolved or, as the case may be, cease to exercise jurisdiction in such area;

(b) all powers, functions and duties of the Corporation, its [Mayor], [Wards Committee], Executive Committee, Development Committee and other Committees established under clause (e) of Section 5 and of the [Municipal Commissioner] shall as from the specified date, be vested in and be exercised, performed and discharged by an officer appointed in that behalf by the State Government (hereinafter referred to as the Administrator) and the Administrator shall be deemed in law to be the Corporation, the [Mayor], the [Wards Committee], Executive Committee, Development Committee or other Committees, or the [Municipal Commissioner] as the occasion may require;

(c) such salary and allowances of the Administrator as may be fixed by general

or special orders of the State Government in that behalf, shall be paid out of the Corporation fund.

(2) Subject to any general or special orders of the State Government, the Administrator may, in respect of all or any of the powers conferred on him by clause (b) - (i) consult such Committee or other body, if any, constituted in such manner as may be specified in that behalf; or

(ii) delegate, subject to such conditions as he may think fit to impose, the power so conferred to any person or Committee or other body constituted under sub-clause (i), to be specified by him in that behalf.

(3) The provisions of this section shall be in addition to, and not in derogation of, the provisions contained in Section 579 and Section 580]."

19. It is significant to notice that Article 243-U deals with the term of the Municipality and it reads as follows:

"243-U. Duration of Municipalities, etc.- (1) Every Municipality, 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:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution."

20. It is apposite at this juncture to notice the provisions contained in Article 243-E, which deals with the term of the Panchayat. This is relevant because prior to notification making it a Nagar Panchayat, it was a Gram Panchayat within the meaning of Article 243-E. Conspicuous by its absence in Article 243-E is the proviso providing for right of opportunity of being heard. A contrast between Article 243-U and Article 243-E would suggest to us that the lawgiver intended expressly for conferring a right of hearing when dissolution was affected in respect of the Municipality. Equally relevant in this context is the terms of Section 8-AA of the Municipal Corporation Act. When Municipal Council is upgraded as Municipal Corporation, it is not necessary that a Municipal Council is automatically dissolved. A power is lodged with the Government to dissolve the Municipal Corporation by resorting to Section 8-AA. In other words, the up-gradation of a Municipal Council into a Municipal Corporation does not result in the term of the members being cut short. If it is to be so done, the Act provides for the mechanism as contained in Section 8-AA. Reading Section 8-AA with Article 243-U(1), it was that the Court found that compliance with principle of natural justice by giving a hearing was mandatory and, it was on the said basis, that the case came to be decided by the Division Bench and it was upheld by the Hon'ble Apex Court. It is, at this juncture, also not irrelevant to notice the provisions contained in Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as the "1947 Act"). Section 8 of the 1947 Act, which was also apparently amended in 1994 and in 1995 following the 73rd Amendment to the Constitution, reads as follows:

"8. Effect of change in population or inclusion of the area of a [Gram Panchayat] in Municipalities, etc.- If the whole of the area of [Gram Panchayat] is included in a city, municipality, cantonment, notified area, or [Nagar Panchayat] the [Gram Panchayat] shall cease, and its assets and liabilities shall be disposed of in the manner prescribed. If a part of such area is so included, its jurisdiction shall be reduced by that part."

21. We may also notice Section 12(3)(a) of the 1947 Act, which reads as follows:

"(3)(a) A Gram Panchayat shall, unless sooner dissolved under Clause (f) of subsection (1) of Section 95, continue for five years from the date appointed for its first meeting and no longer."

22. It is also relevant to notice Section 95 of the 1947 Act. It reads as follows:

"95. Inspection - (1) The State Government may-

(a) cause to be inspected an immovable property owned used or occupied by a Gram Panchayat, or a joint committee [or a Nyaya Panchayat] or any work in progress under the direction of such [Gram Panchayat] [or Joint Committee or a Nyaya Panchayat].

(b) by an order in writing call for and inspect a book or document in the possession or under the control of a Gram Panchayat or a Joint Committee or a Nyaya Panchayat.

(c) by an order in writing require a Gram Panchayat or a Joint Committee or a Nyaya Panchayat to furnish such statements, reports or copies of documents relating to the proceedings or duties of the Gram Panchayat or such committee or a Nyaya Panchayat as it thinks fit;

(d) record in writing for the consideration of a Gram Panchayat or Joint Committee any observation which it thinks proper in regard to the proceedings or duties of such Gram Panchayat or Joint Committee.

(e) institute any enquiry in respect of any matter relating to a Gram Sabha, Gram Panchayat or Nyaya Panchayat; and

(f) [* * *] dissolve any Gram Panchayat, Joint Committee, [Bhumi Prabandhak Samiti] or Nyaya Panchayat if in the opinion of the State Government such [* * *], Gram Panchayat, Joint Committee [Bhumi Prabandhak Samiti] or Nyaya Panchayat has abused its position or has continuously failed to perform the duties imposed upon it by or under this Act or if its continuance is not considered desirable in public interest;"

23. It is most relevant to notice that there is no provision in the 1947 Act, which is similar to the provision contained in Section 8-AA of the Uttar Pradesh Municipal Corporation Act. Therefore, the upshot of the above discussion would be that under Section 4 of the Municipalities Act, a preliminary notification, following the procedure contemplated therein, inviting objections, consideration

of the objections and if found fit, issuance of a notification under Section 3 read in conjunction with Article 243-Q are the indispensable requirements for the constitution of various levels of local self-government as contemplated. We would think that if the objections, which are filed in time, are considered and the decision is taken, then it may not be open to challenge on the ground that the person was not given a personal hearing. It is to be noted that even according to the petitioners, there are thousands of persons living in an area and what the Act specifically contemplates is the consideration of objections given in writing and that too within the time.

24. Principles of natural justice are the contribution of the courts towards the cause of justice. Principles of natural justice are observed in various contexts and in various ways. In some situations, the right to represent against a proposed action would suffice. In other cases, it may be necessary to give a right of personal hearing. Even a right of personal hearing may be afforded to a person unaided by service of a legal practitioner in some situations; but, there may be situations, which may demand that a person be assisted by a qualified practitioner of law which alone would satisfy the requirements of justice. Therefore, it would all depend on the context, the object, the implications involved in the practicality of complying with the various aspects of natural justice and far more importantly, the actual provisions of the governing statute. Learned counsel for the petitioner sought to draw sustenance from the judgment of the Hon''ble Supreme Court in the case of Baldev Singh and others v. State of Himachal Pradesh and others reported in (1987) 2 SCC 510. Therein, the Hon''ble Apex Court was dealing with Section 256 of the Himachal Pradesh Municipal Act, 1968, which provides for constitution of a notified area. Section 256 reads as follows:

"256. Constitution of notified area.- (1) The State Government may, by notification, declare that with respect to some or all of the matters upon which a municipal fund may be expended under Section 51, improved arrangements are required within a specified area, which nevertheless, it is not expedient to constitute as a municipality.

(2) An area in regard to which a notification has been issued under Sub-section (1) is hereinafter called a notified area.

(3) No area shall be made a notified area unless it contains a town or bazar and is not a purely agricultural village.

(4) The decision of the State Government that a local area is not an agricultural village within the meaning of sub-section (3) shall be final, and a publication in the Official Gazette of a notification declaring an area to be a notified area shall be conclusive proof of such decision."

25. Therein, no doubt, the Hon''ble Apex Court has held as follows:

"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. Kapoor v. Jagmohan*, AIR 1981 SC 136. 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*, 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:

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."

26. We would think that the said decision was rendered in the context of Section 256 therein and it is also a case where there was no attempt for complying with natural justice in any manner. There is no provision like Section 4 of the Uttar Pradesh Municipalities Act, which provides for preliminary notification, calling for objections and it being considered as it is contemplated in the Act in question in these cases. The Hon"ble Apex Court, therefore, took the view that people should be given an opportunity of being heard in view of the serious consequences like loss of office in Gram Panchayat etc.

27. At this juncture, it is also necessary to notice the decision in the case of State of Orissa v. Sridhar Kumar Malik and others reported in (1985) 3 SCC 697. That was a case, which arose under the Orissa Municipal Act, 1950. Section 417-A of the said Act, which was dealt with by the Hon"ble Apex Court, provided as follows:

"417-A(1) The State Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of this Act in any area, specified in the notification other than a municipality.

(1-a) Before the publication of a notification under sub-section (1) the State Government shall cause to be published in the Official Gazette and also at least in one newspaper circulating in the area a proclamation announcing the intention of Government to issue such notification and inviting all persons residing within such area to submit their objections, if any, in writing to the District Magistrate within one month from the date of publication of the proclamation in the Official Gazette.

(1-b) The District Magistrate shall, with all reasonable despatch, forward all objections so submitted along with his views thereon to the State Government who shall, before publication of the notification under sub-section(1), take into consideration the objections and views forwarded as above.

(2) An area, in respect of which such a notification has issued, is hereinafter called a "notified area".

28. The Court proceeded to take the view that the proposal in the proclamation made under subsection (1-a) must be precise and clear, and indicate with sufficient accuracy the area intended to be notified, and also indicate 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, as otherwise it will not be

possible to avail of the right to make objections. It was found on the said ground that the notification did not comply with the Section in question. It is also found that contrary to the provisions, the proclamation was framed in the English language in the Gazette and also in the local newspaper. The notification could have been in Oriya, which is the local language. Reference is made to Rule 602 of the Orissa Municipal Rules, 1953 and it was found that proclamation in the official gazette alone would not suffice, as it is a notorious fact that few people beyond those who belong to the official community actually read the Official Gazette. But, we wish to point out that the Hon"ble Apex Court did not hold that there must be an opportunity of hearing under the said provision.

29. Therefore, we would think that it may not be proper to invalidate the notification under the Act in question on the ground that the petitioner was not given opportunity of hearing. That the objections of the petitioner were considered cannot be a subject of any matter of dispute because the petitioners in Writ Petition (M/S) No.133 of 2016 and Writ Petition (PIL) No. 21 of 2016 would say that their objections were considered in a cursory manner and the complaint was not communicated. Therefore, the question arises whether there is a legal requirement to communicate the decision taken rejecting the objections. We are of the firm view that there is no legal requirement that the decision, which has been taken on the objections to the notification, must be communicated to the party. The publication of the final notification would be an answer to the objections.

30. In both these cases, we are involved with a case of notification of an area as a Nagar Panchayat. A Nagar Panchayat is constituted as unit of self-government for an area which is in transition from rural area to urban area. The criteria for notifying various forms of local self-government, namely, Nagar Panchayat, Municipality and Municipal Corporation are combined in sub-Article 2 of Article 243-Q. We would think that when the Constitution itself contemplates the Nagar Panchayat as an area, which is neither rural nor fully urban, but, it is a rural area on its path to becoming an urban area, the criteria must be viewed in the said context. At this juncture, we may also notice the following averments in the counter affidavit filed in the writ petition filed by Mr. Navnish Negi. In the counter affidavit, it is, inter alia, stated as follows:

"5. That the contents of para 4 to 10 of the writ petition are not admitted. In reply thereto it is reiterated that the District Magistrate Pauri Garhwal vide letter dated 06.02.2004 proposed for the formation of Nagar Panchayat at Satpuli informing that Satpuli is situated on the Kotdwar-Badrinath State Highway and is a measure commercial and developed area. It was also stated that there is a Police Station, Government Hospital, Post Office, Electricity Station, Schools and other Government Offices situated at Satpuli and the same is a Central Place and Commercial Center for about 150 villages of 4-5 Blocks, where more than 10,000/- people visit daily. It was also informed that more than 75% population of the area is engaged in business and other occupation and less than 25%

population is dependent on agriculture. It is relevant to state here that the aforesaid proposal specifically stated that since the Gram Panchayat Satpuli had limited sources of income it could not provide proper facilities to the residents such as Roads, cleanliness, Street lights, Toilets etc. and for providing such facilities it was recommended to form a Nagar Panchayat. It is pertinent to state here that after proper appraisal and procedure the Nagar Panchayat Satpuli was formed. A copy of the letter dated 06.02.2004 of the District Magistrate Pauri Garhwal is being annexed herewith as Annexure CA-1.

6. That the contents of para 11 & 12 of the writ petition require no comments being matter of records.

7. That the contents of para 13 to 18 of the writ petition are not admitted. In reply thereto it is submitted that due to the increasing urbanization the State Government endeavours to provide all the basic amenities to the local public as also to the tourist by establishing and forming Nagar Panchayats, Nagar Palika Parishads and Nagar Nigams from time to time as per the prescribed procedure. It is also submitted that due to peculiar Geographical conditions and Local needs, the aforesaid norms are sometimes relaxed. It is pertinent to state here that the Nagar Panchayat Satpuli, District Pauri Garhwal, has been established after proper exercise of the powers derived under Section 3(1) of the Municipalities Act, 1916, in the light of procedure prescribed under Article 243-Q Part 2. It is stated that prior to the formation of Nagar Panchayat Satpuli, District Pauri Garhwal, objections and suggestions were invited from the public at large by publishing in the news papers the tentative notification dated 28.01.2014. A copy of the tentative notification dated 28.01.2014 is being annexed herewith as Annexure C.A.-2. It is further submitted that it was only after proper consideration of the objections and suggestions the State Government, vide its order dated 08.02.2014, established the Nagar Panchayat Satpuli, after adopting the prescribed procedure and following all the formalities."

31. There is no rejoinder affidavit filed to the same.

32. We must also remind ourselves that in writ jurisdiction, the Court does not do merit review. The Court is primarily concerned with judicial review; the question is whether the decision making process is legally flawed; in the case, where decision making process is done under the aegis of the statute, whether the statute has been complied with or violated. The decision per se cannot be overturned on the basis that it is an incorrect decision. If two views are possible, the view taken by the Administrator will not be upset on the ground that the Court thinks that the better view could have been taken. That is not in the province of the Writ Court.

33. We proceed on the basis that notifications were published under Section 4, as contemplated under the Act, following the 73rd amendment, proposing to constitute the areas in question as Nagar Panchayats. In both sets of cases, objections were invited; objections were considered apparently; and not being

found worthy of acceptance, the final notification came to be published.

34. Now, we must advert to the argument based on the Government Order dated 10.09.1986. It is true that much prior to the 73rd Amendment in the State of Uttar Pradesh, of which State of Uttarakhand was once a part and whose orders are followed in terms of the State Reorganization Act, 2000, it was stipulated that to upgrade a local body from one level to another, in this case to make it a Nagar Panchayat, the area must have population in the case of hilly area of at least 10,000 and plain area of at least 20,000. The order also contemplates consideration to the annual income, namely, that it should not be below Rs. 30,000/- of the residents of the area; 75 percent of the people in the area should derive their income from non-agricultural sources. There can be no doubt that, if these considerations are conclusive and clinching, the petitioners may have a case, for there is not much dispute that the population in the area in question falls below 10,000 and 20,000 respectively. But, after the advent of the 73rd Amendment to the Constitution in the year 1994, the situation has undergone a radical change. This we say for the reason that the criteria for notifying areas as Nagar Panchayat, with which we are concerned in these cases, are firmly embedded in sub-Article 2 of Article 243-Q. They find reflection also in the law made by the State Legislature, namely, the Uttar Pradesh Municipalities Act, as contained in Section 3. A bare perusal of the criteria, as indicated in sub-Article 2 read with Section 3 of the Act, would make it abundantly clear that the criteria, which were contained in the earlier Government Order of the year 1986, are clearly incompatible with the criteria as indicated in the Constitution and also in the Act. Though population is indicated as one of the criteria, neither the Constitution nor the legislature has intended that the limit, which is mentioned in the Government Order of the year 1986, will continue to have clinching value, as is sought to be attached to the Government Order. It certainly is a relevant aspect; but, it is a relevant aspect to be considered along with various other aspects. We particularly emphasize the presence of the words "such other factors as the Governor may deem fit both in Article 243-Q(2) and also in Section 3". To arrive at a conclusion, the three factors, which are impressed upon us, as flowing from the Government Order of 1986, cannot hold sway by themselves. The density of the population, the revenue generated for local administration, the percentage of employment in non-agricultural activities, economic importance are all factors, besides any other factors, which the Governor may take into consideration, are the new criteria. We would think that placing the Government Order side-by-side with Article 243-Q(2) and also provisions contained in Section 3 of the Act, the result is inevitable that a large amount of latitude within the four corners of the aforesaid provisions is made available to the State in determining whether an institution of self Government is to be constituted for an area as provided under the Act.

35. We must also notice that the word "population" is defined with reference to the last census. Therefore, the point of time at which the authority is to consider the number of persons residing in the area is also fixed as per the Constitution

and it may not be the population at that time when the notification was issued that would be relevant.

36. We are of the clear view that the argument of Mr. Kishore Kumar that the notification must be seen as thwarting the will of the people and without consent of the people living in the area, notification cannot be issued within the meaning of Article 243-Q, is untenable. While, it is true that the soul of democracy is an implied consent of the governed, the extent of consent cannot be pushed to persuade us to hold that when the relevant criteria are sufficiently present in the mind of the decision-maker and the welfare of the people concerned demands notifying an area within the meaning of Article 243-Q, the Government will be found to be acting illegally, if it acts without either seeking or getting consent of all. The purpose behind notifying areas, as contemplated in Article 243-Q, is to take areas, which are in various stages of development, to higher levels, so that better facilities are made available to the people living in a particular area. In this context, we find it our duty to refer to Section 7 of the Uttar Pradesh Municipalities Act, which provides for the following duties:

"7. Duties of [Municipality].-(1) It shall be the duty of every [Municipality] to make reasonable provision [within the municipal area for],-

(a) lighting public street and places;

(b) watering public streets and places;

[(bb) making a survey, and erection of boundary marks, of the Municipality;]

(c) cleaning public streets, places and drains, removing noxious vegetation, and abating all public nuisances;

(d) regulating offensive, dangerous or obnoxious trades, callings or practices;

[(dd) confinement, removal or destruction of stray dogs and dangerous animals;]

(e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projection in streets or public places;

(f) securing or removing dangerous buildings or places;

(g) acquiring, maintaining, changing and regulating places for the disposal of the dead [and making arrangements for disposal of unclaimed dead bodies after ascertaining from the police in writing that there is no objection to do so;]

(h) constructing, altering and maintaining public streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works;

[(hh) reclaiming unhealthy localities;]

(i) Planting and maintaining trees on road sides and other public places;

[(ii) providing water supply for domestic, industrial and commercial purposes;]

(j) providing a sufficient supply of pure and wholesome water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water use for human consumption and preventing polluted water from being so used;

[(jj) maintaining in addition to any other source of water supply, public wells, if any, in working condition, guarding from pollution their water and keeping it fit for human consumption;]

(k) registering births and deaths;

(l) establishing and maintaining a system of public vaccination;

(m) establishing maintaining or supporting public hospitals and dispensaries, and providing public medical relief;

[(mm) establishing, maintaining and assisting maternity centres and child welfare and small family norms;]

[(n) maintaining or contributing to the maintenance of veterinary hospitals;]

[(nn) establishing and maintaining or guaranteeing aid to institutions of physical culture;]

[(o)] establishing and maintaining primary schools;

[(p)] rendering assistance in extinguishing fires and protecting life and property when fires occur;

[(q) protecting, maintaining and developing the property vested in, or entrusted to the management of the [Municipality];]

[(qq) maintaining the finances of the [Municipality] in satisfactory condition and meeting its liabilities;]

[(r)] [prompt attention to official letters and preparation of] such returns, statements and reports as the [State Government] requires the [Municipality] to submit; and

[(s)] fulfilling any obligation imposed by law upon it;

[(t) regulating tanneries;

(u) construction and maintenance of parking lots, bus stops and public convenience;

(v) promoting urban forestry and ecological aspects and protection of the environment;

(w) safeguarding the interests of weaker sections of society including the handicapped and mentally retarded;

(x) promoting cultural, educational and aesthetic aspects;

- (y) constructing and maintaining cattle pounds and preventing cruelty to animals;
- (z) slum improvement and up gradation;
- (za) urban poverty alleviation;
- (zb) providing urban amenities and facilities such as gardens, public parks and play grounds.]"

37. Section 8 deals with various discretionary duties. Therefore, with the passage of time and the developments which take place in a particular area, it may become ripe for a decision-maker to apply his mind, in the interest of the development of the people and the area, to notify the area accordingly and appropriately. We understand the actual complaint of the petitioners as the liability, which they would incur to pay higher taxes. But, taxes are to be paid necessarily for development and the contention would be totally unfounded, if their argument is that because an area is notified, the petitioners would have to pay higher taxes if the other conditions are fulfilled. No doubt, we appreciate the argument of the petitioner that Government must be careful when it exercises power under Section 3 read with Section 4. We appreciate the concern of the petitioners that if the power is used indiscriminately and without application of mind and without considering the objections, it can result in purely rural areas being stamped with the impress of an urbanized area. We notice, in this regard, the argument of Mr. Navnish Negi that urbanization is not a panacea for all the ills that plague our body polity; but, where it is due and the conditions are right, it would be the duty of the Government to stamp the area with the appropriate impress it warrants in facts and in law. As already noted, the Court is not concerned with merit review and we would think that, in the facts of these cases, petitioners may not be justified in attacking the notifications.

38. There is one argument of Mr. Navnish Negi that there was a discrepancy between the statement in the counter affidavit that objections were considered and the documents produced by way of reply under the Right to Information Act. It is true that the reply given under the Right to Information Act is that no objections were received in time; whereas in the counter affidavit, it is stated that objections were considered. We would notice two things. Firstly, we notice that petition is filed in purported public interest. There is one petitioner in this case. The answer under the Right to Information Act is given in reply to a query by another person, who is not a party to the writ petition. The actual question, which is posed before the authority under the Right to Information Act, is not a part of the record. We have also noticed the un-rebutted allegations in the counter affidavit about the developments in the area, which, according to the Government, warranted the issuance of the notification. In the totality of the facts, though we are not oblivious to the discrepancy, we would think that we would not exercise the discretion in favour of the petitioner. There is an argument by Mr. Navnish Negi, learned counsel for the petitioner that the notification is bad for the reason that the notification ills squares with the

demand of democracy that elected representative should be taken into confidence before the notification is issued and, therefore, the notification is illegal. We would think that the said argument is also not sound. The method of bringing out a notification is specifically provided in the Act. The Act does not contemplate consultation with the representatives specifically. Any person, who is aggrieved, can, however, object on the issuance of the notification under Section (4). His objections are liable to be considered with due application of mind. The elected representative is also entitled to object to the notification and if he objects, his objections are also liable to be considered. Apart from that, we do not see any need or warrant for consultation with the representatives. It is another matter that a Government may seek their views or that a particular proposal may originate from the elected representatives; but to say that the notification is legally bad for the reason that they were not consulted is carrying things too far.

39. The contention that the villagers would be deprived of MGNREGA and the benefits of various schemes do not appeal to us, as these are all matters which are of merit review and cannot amount to a legal ground.

40. There is one aspect, which we must, however, indicate, which troubles us. In these cases, we notice that seven days' time alone was granted for the filing of the objections and suggestions when publication was made under Section 4. It is not as if the matter is so urgent that such a short notice is to be given. Though the petitioners have not raised any complaint as such against the short period, and we need not actually pronounce on this; but, we certainly think that in future, Government must apply its mind to it and give reasonable time to persons concerned to raise objections for proposal and also apply its mind to the matter.

41. There is another aspect, which is pressed upon by the learned counsel for the petitioners and that is, after the notification, elections have not been held and they are being delayed and they are forced to work with the Administrator appointed. A long period, we notice, has elapsed in respect of Writ Petition (PIL) No. 154 of 2014. We would think that it is the essence of democracy that the wishes of the people are ascertained in the form of an election and duly elected representatives are put in place under the new regime. While we reject the contentions subject to the observations, which we have made, we also direct that the elections will be held in both at the earliest, at any rate, within a period of four months.

42. The writ petitions are, accordingly, dismissed. No order as to costs.

43. Though oral request is made by Mr. Kishore Kumar for giving certificate of leave to appeal, we do not think that the applicant has made out a case for grant of certificate. Prayer is rejected.