

(2016) 03 BOM CK 0132
In the Bombay High Court
Case No : Writ Petition No. 7061 of 2015

Rajesh Sharad Mapara and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 14-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 243, Article 243Q, Article 243-Q
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 3, Section 3(3), Section 341A, Section 341B, Section 6, Section 6(1)

Citation : (2016) 3 AIRBomR 203 : (2016) 5 ALLMR 549 : (2016) 5 BCR 481 :
(2016) 3 MhLJ 421

Hon'ble Judges : N.H. Patil and A.A. Sayed, JJ.

Bench : Division Bench

Advocate : C.G. Gavnekar, for the Appellant; Vikas Mali, AGP, for the Respondent

Final Decision : Dismissed

Judgement

A.A. Sayed, J.—1. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for the parties.

2 By this Petition under Article 226 of the Constitution, the Petitioners have impugned the Notification issued by Respondent No. 1-State of Maharashtra dated 26 June 2015. By the impugned Notification, in exercise of powers conferred under sub- sections (1), (1A) and (2) of section 341A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as "the said Act"), the Government of Maharashtra has specified the local area of village Panchayat of Pali in Raigad District to be a transitional area (an area in transition from a rural area to an urban area) and to constitute a Nagar Panchayat by the name Pali Nagar Panchayat for the said transitional area. The Petitioners have also impugned the consequent Notification dated 26 June 2015, appointing Respondent No. 3-Tahsildar as Administrator to exercise all powers and duties of Pali Nagar Panchayat till the said Nagar Panchayat is duly constituted.

3 The Petitioners are elected members of Gram Panchayat, Pali, established under the provisions of Maharashtra Village Panchayat Act, 1958. According to the Petitioners prior to publication of the impugned final Notification dated 26 June 2015, the procedure prescribed in sub-sections (3), (4) and (5) of section 3 of the said Act as contemplated under sub-section (1B) of section 341A has not been followed. The Petitioners contend that before publication of the impugned final Notification, the draft Notification dated 1 March 2014 ought to have been published by the State of Maharashtra in at least one newspaper circulating in the area to be specified in the final Notification, announcing the intention of the Government to issue the final Notification and inviting objections to the proposal (of specifying the local area of Village Panchayat of Pali as transitional area and constituting Nagar Panchayat) within 30 days from the date of publication. It is asserted that in absence of such draft Notification having been published, the impugned final Notification dated 26 June 2015 is illegal and liable to be set aside.

4 On behalf of the Respondents an Affidavit-in-Reply has been filed by Shri Prakash T. Gaud, Joint Secretary, Urban Development Department, Mumbai. It is averred in the said Affidavit that the draft Notification was published on the Notice Board of Gram Panchayat Pali, Tahsil Office, Pali and Collector Office, Alibag, District Raigad. It is stated that the villagers of Pali Gram Panchayat as well as elected members of Pali Gram Panchayat were aware about the intention of the State Government and that after the publication of the draft Notification, the Pali Gram Panchayat had called Gramsabha on 5 July 2014 and unanimously supported the constitution of Nagar Panchayat and nobody raised any objection for constitution of Nagar Panchayat. In para 5 of the Affidavit it is averred that on 26.06.2015 the State Government has issued final Notification in the Official Gazette under sub section 1, 1(A) and 2 of Section 341A of the said Act and under the provisions of clause (a) of sub-section (1) of Section 254 with sub-section (1) of Section 4 of Maharashtra Zilla Parishad and Panchayat Samities Act, 1961 and under the provisions of clause (b) of sub-section (2) of Section 4 of the Maharashtra Village Panchayat Act (Act III of 1959) with clause (g) of Article 243 of Constitution of India, duly published the same and dissolved the Grampanchayat. Significantly, it is admitted in the said Affidavit that the draft Notification was not published in local newspaper.

5 We have heard learned Counsel for the Petitioners and learned AGP for the Respondents.

6. Article 243Q of the Constitution provides for constitution of Municipalities. It reads 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.

7. Section 341A of the said Act is relevant for our purposes. It reads as under:

341A. Specification of a transitional area and incorporation of a Nagar Panchayat.

(1) The State Government may, having regard to the factors mentioned in clause (2) of article 243-Q of the Constitution of India, specify, by notification in the Official Gazette, an area in transition from a rural to an urban area to be a transitional area :

Provided that, no such area shall be so specified as a transitional area unless,-

(a) such area has a population of not less than ten thousand and not more than twenty-five thousand; and

(b) such area is not more than twenty kilometers away from the territorial limits of any Municipal Corporation or a " A " Class Council and the percentage of employment in non-agricultural activities in such area is not less than twenty-five per cent; or

(c) such area is more than twenty kilometers away from the territorial limits of any Municipal Corporation or a "A" Class Council but the percentage of employment in non-agricultural activities in such area is not less than fifty per cent.

(1A) Notwithstanding anything contained in the proviso to sub-section (1), the State Government may, by notification in the Official Gazette, declare an area which is a District Headquarter or a Taluka Headquarter to be a transitional area.

(1B) Prior to the publication of a notification under sub-section (1) or (1A), the procedure prescribed in sub-sections (3), (4) and (5) of section 3 shall mutatis mutandis be followed.

(2) For every transitional area so specified under sub-section (1), there shall be

constituted a Nagar Panchayat as provided in section 341B which shall be known by the name of..... Nagar Panchayat. Every such Nagar Panchayat shall be a body corporate and shall have perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contract and may by the said name sue and be sued.

(emphasis supplied)

8 Section 3 referred to in sub-section (1B) of section 341A (reproduced hereinabove) reads as follows:

"3. Specification of areas as smaller urban areas.

(1)

(2)

(3) Before the publication of a notification under sub-section (2), the State Government shall cause to be published in the Official Gazette, and also in at least one newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in writing with the reasons therefor, to the Collector of the District, within not less than thirty days from the date of the publication of the proclamation in the Official Gazette.

Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be declared as a municipal area.

(4) The Collector shall, with all reasonable dispatch, forward any objection so submitted to the State Government.

(5) No such notification as aforesaid shall be issued by the Sate Government unless the objections, if any, so submitted are in its opinion insufficient or invalid."

9 Thus, under sub-section (1B) of section 341A, prior to the publication of a Notification under sub-section (1) or (1A), the procedure prescribed in sub-sections (3), (4) and (5) of section 3 is required to be followed. In other words, before publication of the final Notification, the State Government is required to publish in the Official Gazette and also at least one newspaper circulating in the area a proclamation/draft Notification announcing its intention to issue such final Notification and inviting all persons who entertain any objection to the proposal of the Government (to specify an area in transition from rural area to an urban area to be transitional area and constitute a Nagar Panchayat) to submit the same in writing with reasons therefor to the Collector of the District. The Collector is required to forward the objections, if any, to the State Government. No final Notification can be issued unless the objections, if any, so submitted are in the opinion of the State Government insufficient or invalid.

10 A Division Bench of this Court (at Aurangabad) in a somewhat similar case in *Laxman Jagannath Yadav vs. State of Maharashtra and others*, , 1990 MhLJ 574, held in paragraph nos.5, 6 and 7 as under:

"5. Section 6 of the Maharashtra Municipalities Act, 1965, authorises State Government to alter the limits of a Municipal area by Notification in Government Gazette. Consultation with the concerned local bodies and following the procedure laid down in sub-section (3), (4) and (5) of section 3 of the said Act is sine-qua non for the exercise of power under section 6. Sub-section (3) of section 3 of the Act requires that State Government shall cause to publish a Notification in the Official Gazette announcing the intention of Government to issue a Notification altering the limits of a Council and inviting all persons who entertain any objection to the said proposal to submit in writing with reasons therefor to the Collector of the District within two months from the date of publication to proclamation in the Official Gazette. Thus, requirement of sub-section (3) of section 3 is a prerequisite for the alteration of limits of a municipal area which will have to be done under section 6 of the said Act. The Legislature thought it fit to give an opportunity to affected persons who would be transferred from areas of other local bodies into an area of Municipal Council or vice versa, before Notification under section 6 is issued. With this purposes sub-section (3) has been enacted. The Publication of the Notification in the Official Gazette would only make the people aware of the intention of the Government, but no useful purpose would be served merely by making people aware of such an intention. The later part of sub-section making it obligatory on the part of the State Government to call for the objections is very much necessary for giving valid effect to the intention of the Government. If the people are not asked to file their objections, if any, then the very purpose of publishing a preliminary notification would be lost.

6. Mr. Dhuladhvaj, learned A.G.P., wanted to submit that an executive right has been vested in the Government under sub-section (3) of section 3. We are unable to accept with this proposition since no such right is vested in Government by virtue of section 3(3). it merely requires the State Government to follow the due procedure of law before power could be exercised under section 6 of the said Act. In the very nature of the things, it will have to be held that the later part of sub-section 3 requiring that such a notification should contain an appeal to the people affected to file objections, if any, is mandatory in nature and that non-compliance of it will render any action under section 3(3) of the Maharashtra Municipalities Act, 1965, invalid and bad in law. If a power has been vested in a statutory authority by a statute it will have to be exercised in the manners which have been prescribed by the statute and not otherwise. Supreme Court in the case of *Hukam Chand Shyam Lal vs. Union of India* reported in , AIR 1976 SC 789, has observed thus:-

"18 It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and

all other modes of performances are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice."

Not calling objections as required would be violation of principles of natural justice. Later part of sub- section (3) of section 3 of the Act gives statutory recognition to the principle of natural justice and is mandatory in nature.

7. Therefore, we will have to hold that the Notification dated 18th March, 1989, published by the Urban Development Department of the Government of Maharashtra purporting to under section 3(3) of the Maharashtra Municipalities Act, 1965, in respect of the alterations in the boundaries of the Shrirampur Municipal Council is bad in law and it is hereby quashed. Needless to say that we have not expressed any opinion as to the question whether any area should be added or not be added by alteration of the limits of Shrirampur Municipal Council. State Government would be free to take proper steps by adopting procedure prescribed by law."

11 The aforesaid case of Laxman Jagannath Yadav was one concerning alteration of limits of a municipal area by publication of a Notification under Sections 6(1) of the said Act. Section 6(2) stipulates that prior to publication of the Notification under Section 6(1), the procedure prescribed under sub-sections (3), (4) & (5) of Section 3 shall mutatis mutandis be followed. As discussed earlier, sub-section 1(B) of Section 341A (which is applicable in the present case) also stipulates that prior to publication of Notification under sub-section (1) or (1A) of Section 341A, the procedure prescribed under sub-sections (3), (4) & (5) of Section 3 shall mutatis mutandis be followed. The Division Bench held that the procedure prescribed under section 3(3) is mandatory in nature and not calling for objections would be violation of principles of natural justice. In Laxman Jagannath Yadav, as a matter of fact, the draft Notification was published in the newspaper, however the same did not contain any invitation from public to file objections. In the present case, it is an admitted position that the draft Notification dated 1 March 2014 was not even published in any newspaper circulating in the area specified in the final Notification proclaiming the intention of the Government to issue the final Notification so as to invite any objections from public. In these circumstances, indubitably, the mandatory procedural compliances prescribed under sub- sections (3), (4) & (5) of section 3 of the said Act have not been followed. Non-publication of the draft Notification had clearly resulted in denial of opportunity to public to file objections to the proposal of the State Government thereby violating the principles of natural justice. Pertinently, the impugned final Notification specifically states that the Government has not received any objections to the proclamation. Thus, applying the principles laid down in the case of Laxman Jagannath Yadav, we have no hesitation in concluding that the impugned Notifications are bad in law.

12 For the aforesaid reasons, the impugned Notifications cannot be sustained

and are required to be set aside and accordingly set aside. Rule is made absolute in terms of prayer clause (a) of the Petition, which reads as follows:

"(a) by a Writ of Mandamus or writ, order or direction of similar nature, your Lordships be pleased to quash and set aside impugned Notification issued by Respondent No. 1 dated 26/06/2015 annexed at Exhibit - E and Notification dated 26/06/2015 annexed at Exhibit - F hereto appointing Respondent No. 3 as Administrator."

13 In the facts and circumstances of the case, there shall be no order as to costs.