

(2018) 03 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2795 of 2016, 2273, 2652, 2948, 3060, 3065, 3086, 3089, 3094, 3216, 3348, 3386 of 2017, 8, 23, 24, 25, 26, 27, 28, 40, 91, 178, 218, 236, 290, 295, 401, 423, 472, 503, 523, 534, 536, 563, 576, 579, 599, 594, 604 of 2018

SANJAY JOSHI AND OTHER

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Constitution of India, — Article 243-Q, 243-U

Citation : (2018) 03 UK CK 0016

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : V.B.S. Negi, M.S. Pal, Rajendra Dobhal, Rakesh Thapliyal, K.P. Upadhyaya, Subhash Upadhaya, A.K. Joshi, M.S. Tyagi, D.S. Mehta, P.K. Chauhan, S.R.S. Gill, Rahul Consul, Sanjay Raturi, R.K. Joshi,

Final Decision : Disposed Off

Judgement

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Sudhanshu Dhulia, J

1. In this bunch of writ petitions, the petitioners have challenged the inclusion of their Gram Sabha into Nagar Panchayat, and in some

cases into Nagar Palika Parishad and even Nagar Nigam. Petitioners rely upon Article 243-Q as well as Article 243-U of the

Constitution of India read with relevant provisions of the U.P. Municipal Corporation Act as well as U.P. Municipalities Act and the relevant

provisions of the Uttarakhand Panchayati Raj Act, 2016, and would argue that the entire exercise undertaken by the Government in this regard is

illegal. In some of the petitions, the issue is also regarding up-gradation of Nagar

Palika Parishad to Nigam and its fallout as stated above.Â

2. The combined argument of all the petitioners is that proper hearing as visualized under the law has not been given to the petitioners, before the up-gradation of the local bodies.Â

3. On two occasions, hearing was given to the petitioners as well as to the State, which is being represented before this Court by the learned

Advocate General Sri S.N. Babulkar. On 08.03.2018, these matters were adjourned for today i.e. 09.03.2018.

4. It was also a prima facie opinion of this Court earlier that the only issue which has to be seen by this Court is as to whether a proper hearing has

been given to the petitioners by the State/State Authorities in these matters or not, as when a Gram Sabha or any local body is upgraded, though

no opportunity of hearing is required, but when as a consequence of it, a Gram Sabha or Nagar Panchayat or Nagar Palika

Parishad, as the case might be, is to be dissolved, in order to facilitate its inclusion in the upgraded body, then rights of the persons who are elected

representatives, as well as rights of ordinary members of Gram Sabha are involved, and therefore an opportunity of hearing is mandatory. This

has also been laid down by a Division Bench of this Court in its judgment dated 23.06.2011 in the case of State of Uttarakhand & another v. Dinesh

Randhawa & others (Special Appeal No. 103 of 2011) along with connected special appeal.Â

5. Today, before the matters could be heard, the learned Advocate General Sri S.N. Babulkar has very fairly and generously given a statement before

this Court that in order to bring the controversy to an end, the State Government is prepared to give a reasonable hearing, to all the petitioners

and in fact to every affected person.

6. In view of this statement of the learned Advocate General Sri S.N. Babulkar, which needs to be appreciated by this Court, nothing further needs to

be done.Â

7. In view of the above, all the writ petitions stand disposed with the directions to the petitioners to raise their objections, if any, before the Committee

or the Authority, which is authorized under the law to hear such objections. The State Government shall also give an advertisement in two daily

newspapers which have wide circulation in the State of Uttarakhand so that

every other affected person may also file objections. Let a proper advertisement be given within forty-eight hours from today. Let all the affected persons be heard, who shall be given at least one week's time to file their objections from the date of advertisement and within one week thereafter, the State Government shall decide their objections in accordance with law.Â

8. In view of the above, all the notifications which have been challenged by the petitioners in these writ petitions, including the Notification dated

1411/IV(3)/2017 dated 22.09.2017, IV (3)/2016-01 (13)/2010 dated 05.07.2016, IV (3)/2015-01 (15)/2013 dated 29.11.2015, 1416/IV(3)/2017-

387/2001 dated 22.09.2017, 1879(2)/ IV(3)/ 2017-01 dated 24.10.2017 stand quashed. Interim order of this Court dated 11.01.2018 and 19.02.2018

stand vacated.

9. Let a certified copy of this order be issued today itself on payment of usual charges.

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