
(2011) 06 UK CK 0072

In the Uttarakhand High Court

Case No : Special Appeal No. 103 of 2011

State of Uttarakhand and Another

APPELLANT

Vs

Dinesh Randhawa and Others

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Constitution of India, 1950 — Article 243P, 243Q, 243U(1), 243ZG
Uttar Pradesh Municipal Corporation Act, 1959 — Section 5, 8AA
Uttar Pradesh Municipalities (Amendment) Act, 1961 — Section 579, 580

Citation : (2012) 2 UC 921 : (2011) 2 UD 156

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Part IX-A, containing Article 243-P to Article 243-ZG, were inserted in the Constitution by the Constitution (Seventy-fourth Amendment) Act, 1992, w.e.f. 1st June, 1993. Prior thereto, Uttar Pradesh Municipalities Act, 1961 and Uttar Pradesh Municipal Corporations Adhiniyam, 1959 were legislated by the State of Uttar Pradesh. Part IX-A of the Constitution dealt with Municipalities. Clause (e) of Article 243-P defined "Municipality" as an institution of self-government constituted under Article 243-Q. In Article 243-Q, a direction was given to constitute, in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations. Article 243-Q directed that Nagar Panchayats shall be constituted for transitional areas, that is to say, areas in transition from rural areas to urban areas. The said Article provided that whereas a Municipal Council shall be constituted for a smaller urban area; a Municipal Corporation shall be constituted for a larger urban area. It also conceptualized, constitution of an industrial township. The said Article authorized the Government to take into factors mentioned therein for the purpose of determining transitional areas, smaller urban areas and larger urban areas. One of them is the population of the area.

2. Under the aforementioned Uttar Pradesh Municipalities Act, 1961, two Municipal Councils were constituted for two urban areas, known as Hardwar and Haldwani - Kathgodam. As has been provided in Part IX-A of the Constitution of India, the said two Municipal Councils were composed by persons chosen by direct election. On 9th November, 2000, upon reorganization of the State of Uttar Pradesh, the State of Uttarakhand was created. Urban areas of the said Municipal Councils came within the territory of the State of Uttarakhand. By virtue of provisions of the Reorganization Act, those two Acts made by the State of Uttar Pradesh, continue to apply to the State of Uttarakhand. On 8th October, 2010, the State of Uttarakhand decided that population of 1,25,000, residing in areas situated in the plains of the State, shall be regarded as larger urban areas and, accordingly, such areas shall be entitled to have Municipal Corporations. On 20th May, 2011, by a Notification, the said two Municipal Councils were upgraded to Municipal Corporations. In as much as those two Municipal Councils were upgraded to Municipal Corporations, by a Notification dated 20th May, 2011, in exercise of power u/s 8-AA of the aforementioned Uttar Pradesh Municipal Corporations Adhiniyam, 1959, the State Government dissolved the said two existing Municipal Councils. This action on the part of the State Government led to filing of two writ petitions. By a common judgment, a learned Single Judge has allowed both the said writ petitions and quashed the Notification dated 20th May, 2011, issued in exercise of power u/s 8-AA of the Uttar Pradesh Municipal Corporations Adhiniyam, 1959, dissolving the said Municipal Councils of Hardwar and Haldwani-Kathgodam. Being aggrieved thereby, State Government has preferred two appeals.

3. By consent of the parties, those two appeals are heard together finally.

4. Before the learned Single Judge, it was the contention of the writ Petitioners - Respondents that it was obligatory on the part of the State Government to give Municipal Councils a reasonable opportunity of being heard before their dissolution, and that having not been done, the Government Notification dated 20th May, 2011 is illegal. The State had contended before the learned Single Judge that the said two Municipal Councils were upgraded to Municipal Corporations, as the State could do in exercise of its powers conferred by Article 243-Q, read with the provisions of Uttar Pradesh Municipal Corporations Adhiniyam, 1959; by reason of upgradation, there is no Municipal Council and, accordingly, question of giving any hearing to the Municipal Councils did not arise and, in any event, if such hearing had been given, the same could not alter the upgradation already done. Learned Single Judge felt that before doing what was done, in view of Proviso to Sub-article (1) of Article 243-U, Municipal Councils were entitled to reasonable opportunity of being heard before their dissolution, and that having not been given, dissolution of Municipal Councils are not sustainable.

5. In the appeals, it is the contention of the State that the mandate, contained in Article 243-Q, obliges the State to constitute Nagar Panchayats, Municipal

Councils and Municipal Corporations for transitional areas, smaller urban areas and larger urban areas, respectively. It was contended that when a smaller urban area takes the shape of a larger urban area, it is the constitutional duty of the State to ensure that in respect of the urban area, which has become a larger urban area, a Municipal Corporation is constituted. It was contended that this is a continuous duty of the State and, accordingly, as and when a smaller urban area becomes a larger urban area, it becomes obligatory on the part of the State to constitute a Municipal Corporation for that area. It was submitted that in discharge of such constitutional obligation, in as much as the urban areas of those two Municipal Councils became larger urban areas from smaller urban areas, it was obligatory on the part of the State Government to upgrade the Municipal Councils of those two areas to Municipal Corporations. It was submitted that when Municipal Councils are not in existence, by reason of such upgradation, dissolution of Municipal Councils became *fait accompli*. In other words, they stood dissolved by such action, which is obligatory under Article 243-Q and, accordingly, even if hearing was given, the same would have resulted in an idle or formal hearing. It was submitted on behalf of the State that Proviso to sub-Article (1) of Article 243-U, as would be evidenced from other sub-Articles of the said Article, applies when the Municipal Council is in existence, but for the time being the same, composed of persons chosen by direct election, has been dissolved. Therefore, the said Proviso cannot lend any helping hand to the writ Petitioners - Respondents to seek an opportunity of being heard, when steps have been taken to upgrade a Municipal Council to a Municipal Corporation, in terms of constitutional obligation contained in Article 243-Q of the Constitution of India. Learned Counsel for the writ Petitioners - Respondents submitted that Proviso to Sub-article (1) of Article 243-U will apply whenever the law, for the time being in force, allows sooner dissolution of Municipal Councils. It was contended that since the law, for the time being in force, namely, Section 8-AA of Uttar Pradesh Municipal Corporations Adhiniyam, 1959, allows such dissolution, the Proviso to Sub-article (1) of Article 243-U becomes mandatory and, accordingly, an opportunity of hearing before dissolution was *sine qua non* for exercise of power to dissolve u/s 8-AA of the said Adhiniyam.

6. There cannot be any dispute that if a Municipal Council is replaced by a Municipal Corporation, unless there is nothing contrary either in the Constitution or in the applicable laws, namely, the said two laws made by the State of Uttar Pradesh, Municipal Council loses his identity and stands dissolved; in place of the Municipal Council, a Municipal Corporation comes into existence. Persons, composing such Municipal Council, do not compose the Municipal Corporation after Municipal Corporation comes into existence. Though Constitution does not speak contrary thereto, the law, made by the State of Uttar Pradesh applicable to the State of Uttarakhand, namely, Uttar Pradesh Municipal Corporations Adhiniyam, 1959, in Section 8-AA speaks otherwise. The said Section is reproduced below:

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, Deputy 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 Deputy Mayor, 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.

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, u/s 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 upgradation 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 upgradation, no hearing is required to be given, but when, as a consequence of such upgradation, a Municipal Council is to be dissolved, unless the law, for the time being in force, provides that such upgradation 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.

11. We, accordingly, uphold the judgment and order under appeal and dismiss these appeals.

12. The learned Advocate General seeks stay of this order for sometime. We, accordingly, stay the operation of this order for a period of three weeks from today.