
(2016) 12 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : CWP No. 4895 of 2015

Yudh Chand Saklani

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Municipal Act, 1968 — Section 3, Section 4

Citation : (2017) 1 HimLR 230

Hon'ble Judges : Mr. Tarlok Singh Chauhan and Mr. Ajay Mohan Goel, JJ.

Bench : Division Bench

Advocate : Mr. Sanjeev Bhushan, Senior Advocate, with Mr. Digvijay Singh, Advocate, for the Petitioner; Mr. Shrawan Dogra, Advocate General, with Mr. Rupinder Thakur, Additional Advocate General and Mr. Kush Sharma, Deputy Advocate Generals, for the Respondent Nos.

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J.—;This writ petition has been filed by the petitioner as a pro bono publico praying for the following reliefs:

"(i) A writ of certiorari may be issued and the impugned notifications Annexure P-9 dated 07.01.2015 and Annexure P-10 dated 19.01.2015 declaring Nerchowk as Municipal Council may be quashed and set aside being illegal, arbitrary and unconstitutional.

(ii) A writ of certiorari may be issued setting aside and quashing Annexure P-16 dated 26.09.2015 which includes Gram Sabha area for inclusion into Municipal Council Ner Chowk.

(iii) Any other or further writ, order or direction which this Hon"ble Court may deem fit in the facts and circumstances of the present case may also be passed in favour of the petitioner.

2. As per the petitioner, in the year 2013, Excise and Taxation Minister of

Himachal Pradesh, who was also Member of Legislative Assembly from Balh constituency in District Mandi desired that Ner Chowk Panchayat of District Mandi, which falls in Balh constituency be notified as Municipal Council under Section 3 of the Himachal Pradesh Municipal Act, 1994. It is further the case of the petitioner that "in order to satisfy such desire" of the MLA concerned, respondents No. 1 to 3 prepared a proposal and thereafter respondent No. 3, i.e. Director, Urban Development to the Government of Himachal Pradesh directed Deputy Commissioner, Mandi (respondent No. 5) to examine the proposal after taking into consideration the criteria laid down to notify an area as Municipal Council, vide communication dated 01.02.2013 (Annexure P- 1). As per the petitioner, the entire proposed area comprised of villages having "arable lands" and both inhabitants of the area as well as livestock were dependent thereupon and in fact there was no need or requirement of specifying Ner Chowk either as a Municipal Council or as a Nagar Panchayat.

3. As per the petitioner, the proposal of the respondent-State to classify Ner Chowk as Municipal Council, which was "swayed only by Hon"ble Excise & Taxation Minister's desire" was strongly opposed by the affected inhabitants including the petitioner during the stage of investigation conducted by the authorities. Resolutions were passed by Gram Sabhas of Gram Panchayat Kasarla, Gram Panchayat Bhangrotu, Gram Panchayat Dador and Gram Panchayat Ner against the said proposal.

4. Further as per the petitioner, to satisfy the desire of Excise and Taxation Minister, respondent No. 2 vide notification dated 04.06.2014, proposed that areas of Dador, Ner, Kasarla, Malthed and Bhangrotu Panchayats be declared as municipal areas. According to the petitioner, this notification was issued without considering the objections filed by the local inhabitants. Further as per the petitioner, respondent No. 3 also invited objections vide Notification dated 04.06.2014 (Annexure P-4) from the inhabitants of the area as per the provisions of Sub-section (5) of Section 4 of the Himachal Pradesh Municipal Act, 1994. Vide notification dated 04.06.2014, proposal was to classify the specified area as "Nagar Panchayat" and not as "Municipal Council". Again, inhabitants of the affected area opposed the formation of municipality by filing written objections, however, respondents without properly and legally considering the written objections of the inhabitants of the proposed area and without affording any reasonable opportunity of being heard to them, issued notification dated 07.01.2015 (Annexure P-9), declaring areas of Ner Chowk specified in the schedule enclosed as Nagar Panchayat Ner Chowk, District Mandi, Himachal Pradesh, in exercise of powers conferred by Section 4 of the Himachal Pradesh Municipal Act, 1994. Further as per the petitioner, since Excise & Taxation Minister of Himachal Pradesh, i.e. the local Member of the Legislative Assembly had desired that Ner Chowk be notified as Municipal Council and not as Nagar Parishad, therefore, respondent-State by-passed the procedure prescribed in Sub-section (2) of Section 3 of the Himachal Pradesh Municipal Act, 1994 and vide corrigendum dated 19.01.2015 (Annexure P-10) converted Ner Chowk from

"Nagar Panchayat" to "Nagar Parishad", i.e. Municipal Council. As per the petitioner, while doing so, neither any notice was issued nor any objections or suggestions were invited. Further as per the petitioner, thereafter respondent No. 2 on 18.03.2015 issued a notification under Sub-section (2) of Section 3 of the Himachal Pradesh Panchayati Raj Act for excluding the Gram Sabha areas proposed to be included in the Nagar Parishad Ner Chowk and invited suggestions and objections, which were duly filed by the affected persons, however, without considering the suggestions/objections and even before the report of respondent No. 5 being available on record, respondent No. 3 vide notification dated 26.09.2015 excluded the areas of Gram Sabhas for inclusion in Municipal Council. As per the petitioner, the said exclusion was on the basis of notification dated 07.01.2015 and not on the basis of objections raised by the affected people and report submitted by respondent No. 5 in public hearing. Further as per the petitioner, without finalization of the objections, State divided Ner Chowk municipality into wards and respondent No. 5 vide notification dated 03.10.2015 invited objections, which were not yet finalized at the time of filing of the petition. In this background, the petitioner has filed this petition praying for the reliefs already mentioned above.

5. Respondents No. 1 to 3 in their reply denied the allegations made in the petition. It was mentioned in the reply that information/proposal received from the Deputy Commissioner, Mandi vide letter No. 7666, dated 07.01.2014, as per which, annual income of proposed Nagar Panchayat was Rs. 14,075,912/- and tentative population was 15161, was forwarded to the State Government vide letter dated 19.02.2014 with the observation that as per the provisions of Section 3 of the H.P. Municipal Act, 1994, proposed Nagar Panchayat fulfilled both criteria required for constitution of new Municipality. It was further mentioned in the reply that as per the report furnished earlier by the Deputy Commissioner, dated 13.02.2002, Gram Panchayat Dador vide resolution No. 16 dated 01.07.2001 had submitted its No Objection Certificate for constitution of Nagar Panchayat, Ner Chowk as the adjoining area and the said town was a hub of industrial and business activities, and there was a considerable floating population of workers in the area, which required civic amenities, which could only be provided by a Municipality. It was further mentioned in the reply that for providing proper civic facilities to the inhabitants of the area, the constitution of Nagar Panchayat was necessary for the development of the same. It was further mentioned in the reply that Section 4 of the Himachal Pradesh Municipal Act, 1994 empowered the State Government to issue notification by proposing any local area to be Municipal area after observing the procedure laid down therein. As per the respondents, the procedure so laid down was followed, which included affixing the notification of the proposal at some conspicuous place in the office of Deputy Commissioner within whose jurisdiction the proposed local area existed for inviting objections as well as taking into consideration the objections which were so received. It was further mentioned in the reply that the objections which were received through Deputy Commissioner, Mandi were placed before the

competent authority and after going through the same, it was found that inhabitants had raised objections regarding deprivation of benefits of Gram Panchayat area, i.e. MANREGA, levying of Municipal Charges etc. and burden of taxes on BPL families. It was further mentioned in the reply that after taking into consideration the report of the Deputy Commissioner which was to the effect that Ner Chowk area fulfilled the criteria laid down in law to be declared a Municipality and further keeping in view the fact that it was a hub of Industries and urbanization in the said area was giving rise to problems related to urbanization which could be handled only by way of urban development schemes of the Government of India and State Government, the objections so raised by the inhabitants were not found sustainable. It was further mentioned in the reply that the matter for constitution of Nagar Parishad Ner Chowk was placed before Council of Ministers for necessary approval and thereafter, after obtaining approval of the Council of Ministers, notification dated 07.01.2015 was issued. It was further mentioned in the reply that as per the approval accorded by the Council of Ministers, Nagar Parishad, Ner Chowk, i.e. Municipal Council was constituted by including certain areas/Panchayats, however, while issuing notification dated 07.01.2015, by mistake it was shown as Nagar Panchayat instead of Nagar Parishad and this was later on rectified by issuing corrigendum dated 19.01.2015. As per the respondent-State, this was a bona fide mistake and the same did not require inviting objections being an administrative matter. On these bases, respondents No. 1 and 3 opposed the petition.

6. Remaining respondents in their respective replies also supported the plea of the State and it was mentioned in their respective replies that the procedure as contemplated both under the Himachal Pradesh Municipal Act, 1994 as well as Himachal Pradesh Panchayati Raj Act was followed in issuance of notifications which were impugned by way of the present writ petition. It was also mentioned in their respective replies that there was no illegality committed by the State in the issuance of the notifications subject matter of the writ petition.

7. Rejoinder was filed to the reply filed to the reply filed by respondents No. 1 to 3, however, no rejoinder(s) were filed to the replies so filed by the remaining respondents.

8. Mr. Sanjeev Bhushan, learned Senior Counsel for the petitioner primarily argued that the entire exercise undertaken by the respondents was in violation of the statutory provisions provided both in the Himachal Pradesh Municipal Act, 1994 as well as Himachal Pradesh Panchayati Raj Act. As per Mr. Bhushan, the procedure contemplated in Sections 3 and 4 of the Himachal Pradesh Municipal Act, 1994 was not followed and further even otherwise as the process was initiated by the respondents to convert Ner Chowk into a Nagar Panchayat, the subsequent act of declaring/converting the same into a Nagar Parishad without inviting any objections etc. in this regard was per se illegal and not permissible in law. Mr. Bhushan also argued that there was no public interest involved in the declaration of areas of Ner Chowk specified in Schedule appended with

notification dated 07.01.2015 as Nagar Parishad, because this entire exercise in fact had been undertaken by the respondent-State to appease the local member of Legislative Assembly from Balh constituency, who also happened to be the Excise and Taxation Minister. On these grounds, Mr. Bhushan prayed that the petition be allowed and the notifications impugned by way of this petition be quashed and set aside.

9. On the other hand, Mr. Shrawan Dogra, learned Advocate General has argued that there was no merit in the contention of the petitioner that the exercise of declaring Ner Chowk as Nagar Parishad Ner Chowk was done to satisfy the whims of the local MLA as alleged or that the issuance of impugned notification was in violation of the statutory provisions contemplated and laid down in Sections 3 and 4 of the Himachal Pradesh Municipal Act, 1994 or the provisions of the Himachal Pradesh Panchayati Raj Act. Mr. Dogra argued that the entire process was undertaken by the respondent-State strictly in accordance with the provisions by duly notifying the proposal and thereafter inviting objections and dealing with the objections objectively. It was further submitted by Mr. Dogra that the petition so filed by the petitioner could not be termed as a public interest litigation because no public spirited person would ever oppose the conversion of a "Panchayat" into a "Nagar Parishad" when the proposed area was fulfilling the criteria contemplated in Himachal Pradesh Municipal Act, 1994 to be declared a "Nagar Parishad". According to Mr. Dogra, by declaring the areas specified in the Schedule appended with notification dated 07.01.2015 as Nagar Parishad, these areas were to get all the facilities of urbanization, which was in larger public interest. It was also argued by Mr. Dogra that the petition in fact was not maintainable as the person against whom malafides were alleged to the effect that the entire process was undertaken by the Government at the behest of said person, was not impleaded as party respondent in the case. Mr. Dogra argued that even otherwise in the entire writ petition, the petitioner could not point out as to what was the personal advantage which the local MLA was to gain in case the area in issue was declared as a Nagar Parishad. According to Mr. Dogra, it was the duty of the representative of the people of an area to work for the welfare of the people of that area and in case a local MLA moves a proposal for converting Panchayat areas into a Nagar Parishad, if the area in issue fulfils the condition contemplated in the Himachal Pradesh Municipal Act, 1994, then there is nothing wrong in it until and unless it could be proved that the same was being done by the person concerned with an ulterior motive. Mr. Dogra also argued that petitioner was not able to demonstrate as to what prejudice was caused to him by issuance of corrigendum vide which the proposed areas were declared as Nagar Parishad instead of Nagar Panchayat, because the factum remained that the entire formalities which were contemplated to be undertaken in declaring the proposed areas to be a Nagar Parishad were in fact undergone and undertaken by the department. Mr. Dogra also argued that it was not a case where Nagar Panchayat was converted as Nagar Parishad, but it was a case where Panchayat areas were converted into Municipality, be it Nagar Panchayat

or Nagar Parishad. On these counts Mr. Dogra prayed that there was no merit in the petition and the same be dismissed. Ms. Nishi Goel, learned counsel appearing for respondent No. 6 has adopted the arguments of learned Advocate General.

10. We have heard the learned counsel for the parties and have also gone through the pleadings as well as the records of the case, which were directed by this Court to be made available vide order dated 15.07.2016.

11. Before dealing with the case on merit, we would like to deal with the issue raised by learned Advocate General with regard to maintainability of the petition that the same was not maintainable as the person against whom allegations of malafides were made was not impleaded as a party respondent.

12. A perusal of the averments made in the petition clearly demonstrate that there are allegations of malafide made in paras-4 & 7 of the same, which are being reproduced herein below:

"4. That in the year 2013, the present Hon"ble Excise and Taxation Minister of Himachal Pradesh, who is also MLA from Balh constituency, desired that Nerchowk Panchayat of District Mandi, which falls in Balh constituency, may be notified as Municipal Council under Section 3 of the H.P. Municipal Act, 1994. In order to satisfy such desire, the respondents No. 1 and 3 prepared a proposal. The respondent No. 3 vide communication dated 01.02.2013 directed respondent No. 5 to examine the proposal after taking into consideration the criteria laid down to notify an area as Municipal Council. The communication dated 01.02.2013 is appended herewith and marked as Annexure P-1. The perusal of the same will reveal that the respondent No. 5 was directed to take into consideration the following instructions:-

- (a) The population as latest census should exceed five thousands;
- (b) The revenue general for local administration should exceed Rs.Ten lakhs; and
- (c) The resolution passed by concerned Gram Panchayats in favour of constitution of Municipal Council.

7. That in order to satisfy the desire of the Hon"ble Excise and Taxation Minister of the State, the respondent No. 2, vide notification dated 04.06.2014 proposed that the areas of Dador Panchayat, Ner Panchayat, Kasarla Panchayat, Malthed Panchayat and Bhangrotu Panchayat should be declared as municipal area. It is submitted that this impugned notification was issued without considering the abovestated objections filed by local inhabitants. However, vide this notification the respondent No. 3 invited objections from the inhabitants of the areas specified as required under Section 4(5) of the Act. The notification dated 04.06.2014 along with specified area is appended herewith and marked as Annexure P-4."

13. Incidentally, the said Member of Legislative Assembly has not been

impleaded as a party respondent in the petition. In other words, allegations have been made and malafides have been alleged against a person, who has not been impleaded as a party respondent in the petition. In our considered view, when petitioner was levelling allegations of nepotism against the Member of the Legislative Assembly, who also happened to be holding the office of Minister, then it was incumbent upon the petitioner to have had impleaded the said person as party respondent in the case. Said person was not only a property party, but he was also a necessary party as the allegations levelled against him were not innocuous but were serious. Therefore, in our considered view, there is considerable force in the said contention of Mr. Dogra and the petition in fact is bad for non-joinder of necessary parties, however, we will not dwell on this issue any further and will now proceed to adjudicate the case on merit.

14. Sections 3 and 4 of Himachal Pradesh Municipal Act, 1994 provide as under:

"3. Classification of municipalities.- (1) There shall be constituted three classes of municipalities in accordance with the provisions of this section as specified below :-

(i) "Nagar Panchayat" for a transitional area with population exceeding two thousand and generating annual revenue exceeding rupees five lakhs for the local administration;

(ii) "Municipal Council" for a smaller urban area with population exceeding five thousand and generating the annual revenue exceeding rupees [ten] lakhs for the local administration;

(iii) "Municipal Corporation" for a larger urban area with population exceeding fifty thousand and generating annual revenue exceeding rupees two crores for the local administration and which has been declared to be a municipal area under section 3 of the Himachal Pradesh Municipal Corporation Act, 1994 (12 of 1994) :

Provided that a municipality under this section may not be constituted in such urban areas or part thereof as the State Government 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 it may deem fit, by notification, specify to be an industrial township:

Provided further that no cantonment or part of a cantonment shall form part of a municipality.

Explanation.- In this sub-section, " a transitional area", "a smaller urban area" or "a larger urban area" means such area as the State Government 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 nonagricultural activities, the economic importance or such other factors as the State Government may deem fit, specify, by notification for the purpose of this section.

(2) The State Government shall, by notification, constitute the municipalities and specify the class to which a municipality shall belong in accordance with the provisions of this section after observing the procedure as laid down in section 4: Provided that the municipalities existing at the commencement of this Act and listed as Nagar Panchayat or as Municipal Council in the Schedule to this Act, would be deemed to have been constituted and notified as such, under and in accordance with the provisions of this section:

Provided further that the State Government may, after giving a reasonable notice of not less than thirty days of its intention to do so, amend the schedule, by notification and declare any Nagar Panchayat as a Municipal Council or any Municipal Council as a Nagar Panchayat.

4. Procedure for declaring municipal area.- (1) The State Government may, by notification, propose any local area to be a municipal area under this Act.

(2) Every such notification under sub-section (1) shall define the limits of the local area to which it relates.

(3) A copy of every notification under this section, with a translation thereof in such language as the State Government may direct shall be affixed at some conspicuous place in the office of the Deputy Commissioner, within whose jurisdiction the local area to which the notification relates lies, and at one or more conspicuous places in that local area.

(4) The Deputy Commissioner shall certify to the State Government the date on which the copy and translation were so affixed and the date so certified shall be deemed to be the date of publication of the notification.

(5) If any inhabitant desires to object to a notification issued under sub-section (1), he may, within six weeks from the date of its publication submit his objection in writing through the Deputy Commissioner to the State Government and the State Government shall take his objection into consideration.

(6) When six weeks from the date of publication have expired, and the State Government has considered and passed orders on such objections as 22 may have been submitted to it, the State Government may, by notification, declare the local area for the purposes of this Act, to be a municipal area.

(7) The State Government may, by notification, direct that all or any of the rules which are in force in any municipal area shall, with such exceptions and adaptations as may be considered necessary, apply to the local area declared to be a municipal area under this section, and such rules shall forthwith apply to such municipal area without further publication.

(8) When a local area, the whole or part of which was a notified area under the Himachal Pradesh Municipal Act, 1968 (19 of 1968) or a Nagar Panchayat under this Act, is declared to be Municipal Council under this section, the Municipal Council shall be deemed to be a perpetual successor of such notified area

committee or of Nagar Panchayat, as the case may be, and in respect of all its rules, bye-laws, taxes, and all other matters, whatsoever and the Nagar Panchayat shall continue in office and shall notwithstanding anything contained in this Act be deemed to be the Municipal Council until the appointment and election of members is notified by the State Government under section 27.

(9) A municipality shall come into existence on such day as the State Government may, by notification, appoint in this behalf."

15. A perusal of these provisions demonstrate that as per Section 3 of the Act, three classes of Municipality are contemplated, i.e., Nagar Panchayat, Municipal Council and Municipal Corporation. Municipal Council or Nagar Parishad is contemplated for a smaller urban area with population exceeding five thousand and generating the annual revenue exceeding rupees ten lakhs for the local administration.

16. Section 4 of the Himachal Pradesh Municipal Act, 1994 lays down the procedure for declaring Municipal areas. As per this Section, State Government may by notification propose any local area to be a municipal area under the Act. A copy of such notification has to be affixed at some conspicuous place of the office of Deputy Commissioner, within whose jurisdiction the local area to which notification relates lies and at one or more conspicuous places in that local area. It further contemplates that Deputy Commissioner shall certify to the State Government the date on which the copy and translation were so affixed and the date so ordered shall be deemed to be the date of publication of the notification and if any inhabitant desires to object the notification, he may within six weeks from the date of its publication, submit his objections in writing to the State Government through the Deputy Commissioner and the State Government shall take the objections into consideration. This Section further contemplates that after expiry of six weeks from the date of publication and after State Government has considered and passed orders on objections as have been submitted to the notification, the State Government may by notification declare the local area for the purposes of this Act to be a municipal area.

17. Therefore, now it has to be gathered from the records as to whether the procedure contemplated in Section 4 of the Himachal Pradesh Municipal Act, 1994 has been followed in letter and spirit by the respondents before the issuance of impugned notification or not, to consider the allegations of the petitioner that the procedure has not been followed.

18. As per the records, Secretary (Urban Development) to the Government of Himachal Pradesh issued notification dated 04.06.2014 proposing areas as specified in the Schedule enclosed thereto to be declared as municipal area under Section 4 of the Himachal Pradesh Municipal Act, 1994 in order to constitute a municipality under Subsection (2) of Section 3 of the Act to be classified as Nagar Panchayat at Ner Chowk for better development and improved arrangement in the said area.

19. Vide this notification, inhabitants of the area specified in the Schedule were called upon to submit their objections/suggestions, if any, to the proposed declaration to Secretary (Urban Development) in writing through Deputy Commissioner within a period of six weeks from the date of publication of the notification in the Rajpatra. There is a communication available on record dated 19.02.2014 from Director, Urban Development, Himachal Pradesh to Secretary (Urban Development) to the Government of Himachal Pradesh, on the subject "Proposal regarding constitution of Nagar Panchayat Nerchowk" to the effect that as per the proposal received from Deputy Commissioner, Mandi, the figures of population and annual revenue were as under

1. Total income of proposed N.P. Nerchowk (revenue generation from own source) 14075912-00

2. Total population (Tentative population in the proposed area) 15161 souls

20. This demonstrates that the proposal fulfilled the criteria contemplated under Sub-clause (ii) of Sub-section (1) of Section 3 of the Himachal Pradesh Municipal Act, 1994, as per which, "Municipal Council/Nagar Parishad" means a smaller urban area with population exceeding five thousand and generating annual revenue exceeding rupees ten lakhs for local administration.

21. Records also demonstrate that the Council of Ministers on 19.02.2014 approved the constitution of "Nagar Panchayat" at Ner Chowk and thereafter, notification dated 04.06.2014 was issued by the Government. The factum of issuance of notification dated 04.06.2014 is not disputed by the petitioner nor inviting objections on the proposal by the authorities is disputed. What is disputed by the petitioner is that the objections which were filed by the affected persons pursuant to the said notification were neither considered nor decided by the authorities before issuing notification declaring Ner Chowk initially as a "Nagar Panchayat" and thereafter as a "Nagar Parishad" by way of corrigendum.

22. Records demonstrate that after the issuance of notification dated 04.06.2014, objections were received from various quarters, which are available on record. Records further demonstrate that vide notification dated 07.01.2015, respondent-State in exercise of powers conferred by Section 4 of the Himachal Pradesh Municipal Act, 1994, declared the areas of Ner Chowk specified in the Schedule enclosed with said notification as Nagar Panchayat, Ner Chowk, District Mandi. This was followed by issuance of a corrigendum dated 19.01.2015 to the effect that words "Nagar Panchayat", Nerchowk published vide notification dated 07.01.2015 be read as "Nagar Parishad", Nerchowk.

23. Records also demonstrate that before issuance of notification dated 07.01.2015, the matter was placed before the Cabinet on 25.11.2014. What was approved by the Cabinet is as under:

"Approved the constitution of Nagar Parishad, at Nerchowk".

24. Pursuant to this, notification dated 07.01.2015 was issued in which as per

respondent-State, inadvertently instead of words "Nagar Parishad", the words "Nagar Panchayat" were mentioned, which mistake was corrected/rectified vide corrigendum dated 19.01.2015.

25. The above discussion demonstrates that the area which was proposed to be declared Municipality, fulfilled the criteria for being declared as a Nagar Panchayat as well as Nagar Parishad. Besides this, both for declaring the proposed area either as "Nagar Panchayat" or as "Nagar Parishad", the statutory requirement was issuance of a notice under Section 4 of the Himachal Pradesh Municipal Act, 1994 and inviting objections from the inhabitants desirous to object to the said notification. It is not the case of the petitioner that had the initial proposed notification dated 04.06.2014 been issued for Nagar Parishad Nerchowk instead of Nagar Panchayat Nerchowk, then either its tone and tenor would have been different or its contents would have had been different or the procedural formalities which were required to be fulfilled would have been different. Probably, the only difference would have been that instead of words "Nagar Panchayat", the proposal would have contained the words "Nagar Parishad". Be that as it may, fact of the matter still remains that the proposal was to convert areas of Panchayat specified in the proposal into a Municipality.

26. We have already discussed above that inviting of objections is not disputed by the petitioner and during the course of arguments, learned counsel for the petitioner could not objectively point out as to what would have been substantive difference in the objections invited, had the initial proposal itself been for Nagar Parishad instead of Nagar Panchayat. The objections on record demonstrate that the objections against the proposed Nagar Panchayat, as invited vide notification, dated 04.06.2014, were not to this effect that the proposal should not be for Nagar Panchayat, but should be for Nagar Parishad. The objections were to this effect that the Panchayat areas should be allowed to remain as Panchayat areas only. Besides this, it is evident from the reply filed by respondents No. 1 to 3 that the objections so received were taken into consideration and they were not found to be sustainable, as primarily the objections demonstrated that the objectors therein were aggrieved by the fact that if the area was permitted to be converted into a Municipality, then it would deny the inhabitants of the area benefits of Gram Panchayat area, MANREGA and the inhabitants would be subjected to levy of Municipal charges etc. The objections so filed, as is evident from the reply filed by respondents No. 1 and 3, were overruled in larger public interest taking into consideration the benefits which otherwise the inhabitants were to gain once this area was declared as Municipality. Therefore, it cannot be said that the objections were either not considered or decided before the impugned notifications were issued by the department.

27. A perusal of notification dated 07.01.2015 also demonstrates that it is mentioned therein that before issuance of this notification, objections/suggestions received from inhabitants of Gram Panchayat Nerchowk, District Mandi within the prescribed limit were considered and decided by the

Government. There is no reason for us to disbelieve the same as nothing has been placed on record to the contrary by the petitioner.

28. Records also demonstrate that these objections/suggestions were placed before the Urban Development Minister for consideration, however, the same did not find favour with the Minister concerned as it was decided that "notification of constituting Ner Chowk as N.P. may be issued as it is the fastest growing urban area in the State".

29. Therefore, in view of above, there is no merit in the contention of the petitioner that the objections which were received against the proposal were neither considered nor decided before the issuance of impugned notification. At the cost of repetition, we are restating that during the course of arguments, learned counsel for the petitioner could not point out as to what would have been the qualitative difference in objections submitted by the objectors had the initial proposal not been for Nagar Panchayat, but the same had been for a Nagar Parishad.

30. Now coming to the argument of learned counsel for the petitioner that this entire exercise was undertaken by the State Government not in public interest but at the behest of local MLA to satisfy his whims, according to us, this argument is also not sustainable on merit. First of all, as we have already observed above, the MLA against whom malafides have been alleged has not been impleaded as party respondent in the petition. Be that as it may, the petitioner has not produced on record any material from which it could be inferred that the proposal so made by the local MLA was made either with an ulterior motive or the same was not in public interest. It is not a case where the proposal was moved by a person, who had no relation with the area and was a stranger qua the area which was proposed to be declared as a Municipality. In the present case, the proposal was mooted by the local MLA, who, in our considered view, in his capacity as public representative, is duty bound to make efforts to ensure the larger benefit of the people in the area, which he is representing. Further, the petitioner has not been able to demonstrate that after the proposal was mooted by the Local MLA, the State declared the area as Nagar Parishad either by not following the procedure or by flouting the procedure laid down in Section 4 of the Himachal Pradesh Municipal Act, 1994. Therefore, in our considered view, there is no force in this argument of the learned counsel for the petitioner.

31. Coming to the factum of initial notification dated 07.01.2015, having been issued for declaring the proposed area as Nagar Panchayat and thereafter the words "Nagar Panchayat" have been substituted with words "Nagar Parishad" vide corrigendum dated 19.01.2015, in our considered view, the issuance of neither of these two notifications can be faulted with on the basis of grounds taken in the petition. We have already held that the procedure contemplated for declaring the area as a Municipality was strictly followed by the Government before issuance of notification dated 07.01.2015. Respondent-State has duly

explained the need to issue corrigendum dated 19.01.2015. Replies filed by the respondents as well as records demonstrate that after fulfilling all the formalities as are contemplated in Section 4 of the Himachal Pradesh Municipal Act, 1994, when the matter was placed before the Cabinet for its approval on 25.11.2014, the approval granted by the Cabinet is as follows:

"Approved the constitution of Nagar Parishad at Nerchowk".

This was followed by issuance of notification dated 07.01.2015, however, inadvertently in this notification, instead of "Nagar Parishad", the words published were "Nagar Panchayat". To correct/rectify this mistake, corrigendum dated 19.01.2015 was issued, in which the words "Nagar Panchayat", Nerchowk were substituted with words "Nagar Parishad", Nerchowk. It is also pertinent to observe that before issuance of corrigendum, there was no requirement to serve a notice of not less than 30 days, as is contemplated in second proviso to Sub-section(2) of Section 3 of the Himachal Pradesh Municipal Act, 1994, because pursuant to notification dated 07.01.2015, the procedure contemplated in Sub-Section (2) of Section 3 of the Himachal Pradesh Municipal Act, 1994 had not yet been completed and corrigendum was issued by the State Government before that. Therefore, there is no merit in the contention of the learned counsel for the petitioner that corrigendum dated 19.01.2015 is not sustainable in law as it is in violation of second proviso to Subsection(2) of Section 3 of the Himachal Pradesh Municipal Act, 1994.

32. Now coming to notification dated 26.09.2015, vide which Gram Sabha areas have been excluded for the purpose of including them into Municipal Council, respondents No. 2 and 4 in their reply have stated that in view of final notification issued by the Department of Urban Development Annexure P-9, dated 07.01.2015 and corrigendum Annexure P-10, dated 19.01.2015 regarding Nagar Parishad, Ner Chowk, Panchayati Raj Department had issued final notification for exclusion of the areas from respective Gram Panchayats/Gram Sabhas taking into consideration the opinion of the Law Department, wherein it was mentioned that the provisions of the second proviso to Sub-section(2) of Section 3 of the Himachal Pradesh Municipal Act, 1994 have precedence over the Himachal Pradesh Panchayati Raj Act. It was also mentioned in the reply that proposal for the inclusion of areas of the respective Gram Panchayats/Gram Sabhas was initiated and notified by the Department of Urban Development at first instance as per the provisions of the Himachal Pradesh Municipal Act, 1994 and, therefore, Panchayati Raj Department had issued final notification vide Annexure P-16, 26.09.2015 for exclusion of areas from the respective Gram Panchayats/Gram Sabhas and role of the Panchayati Raj Department was limited to follow the provisions of Panchayati Raj Act where the Urban Development Department had notified the Gram Panchayat areas to be included in Municipal limits. Incidentally, the stand so taken by the Panchayati Raj Department to justify the issuance of notification dated 26.09.2015 (Annexure P-16) has not been rebutted by the petitioner by filing any rejoinder etc. We otherwise also find

considerable merit in the averments so made in the reply for the reason that the fact of the matter remains that the affected inhabitants of Gram Panchayats/ Gram Sabhas, who were excluded from Gram Panchayats/Gram Sabhas vide notification dated 26.09.2015 (Annexure P-16) were otherwise heard under the provisions of the Himachal Pradesh Municipal Act, 1994, as they were given due opportunity of filing their objections vide notification dated 04.06.2014. Therefore, it cannot be said that the affected parties were not given an opportunity of being heard, as is being tried to be portrayed by the petitioner.

33. Even otherwise, declaration of Municipalities is a legislative function, which is undertaken by the Government in larger public interest and ordinarily Courts are not to interfere in the decisions so undertaken by the State Government until and unless the judicial conscious of the Court is satisfied that the decision so taken is not in public interest, but has been taken with ulterior motive at the behest of some interested person or persons who personally stand to gain by the declaration of such Municipality. In this case, the petitioner has not been able to demonstrate or prove the same. Petitioner has not been able to demonstrate or prove that the declaration of area subject matter of the writ petition into a Nagar Parishad is either not in public interest or this decision has not been taken by the Government in larger interest of inhabitants of the area, but the same has been taken by the State Government to help a few individuals or the declaration was not done by following statutory requirements of the Himachal Pradesh Municipal Act, 1994.

34. It is settled law that function of the Government while establishing a Municipality is neither executive nor administrative, but it is a legislative process.

35. In *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur*, (1980) 2 SCC 295, the Hon'ble Supreme Court while dealing with U.P. Town Areas Act, 1914 has held that power of the State Government to make a declaration under the same is legislative in character.

36. The Hon'ble Supreme Court in *Baldev Singh and Ors. v. State of Himachal Pradesh*, (1987) 2 SCC 510, has held that affording of hearing to affected persons is essential prerequisite for constituting notified area, however, hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way.

37. The Hon'ble Supreme Court in *Sundarjas Kanyalal Bhathiaja and ors. v. The Collector, Thane, Maharashtra and ors.*, AIR 1990 SC 261, has also held that rules of natural justice are not applicable to legislative action plenary or subordinate. The Hon'ble Supreme Court in para-23 of the judgment has held:

"23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it

is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with,, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

38. In *Karnail Singh and another v. Darshan Singh and Ors.*, 1995 Supp.(1) SCC 760, the Hon"ble Supreme Court has held that amalgamation of two gram sabhas into one is an administrative decision taken by the authorities in public interest and the Court would not interfere unless the same is vitiated with malafides.

39. The Hon"ble Supreme Court in *Solapur Midc Industries Association and ors. v. State of Maharashtra and ors.*, reported in (1996) 9 SCC 621, has held:

"3. It is not disputed that since the State Government has not yet withdrawn the industrial estate/industrial area concerned from the hold of the Corporation, the provisions of the 1961 Act continue to apply. The Preamble thereof is suggestive of its objects sought to be achieved namely the orderly establishment in industrial areas and industrial estates of industries, and to assist generally in the organisation thereof, and for that purpose to establish the Industrial Development Corporation and for purposes connected with the matters therewith. The purpose of the 1949 Act on the other hand, as is suggestive from its Preamble, is to provide for the establishment of Municipal Corporations with a view to ensure a better municipal government of the cities in which municipal corporations are set up. These being the basic differences as to the ambit of the two statutes, the High Court, in our view, rightly arrived at the conclusion that there was inter se no conflict between the two. There may be certain areas such as provision for civil amenities in which there is identity of purpose but these are ancillary and incidental to the main purpose of the respective two statutes. The suggestion drawn from the Assembly debates, to which our attention has been drawn, while passing the 1961 Act, suggestive of the fact that the industrial estates or industrial areas on ripening were meant to be kept under the purview of the 1961 Act until some civic administration in the form of a Panchayat or Municipality could take over is not supported by any statutory provision available in the respective two Acts. As said before the topics of legislation being different, there was no question of their rubbing against each other because being enacted under two different legislative fields."

40. The Hon"ble Supreme Court in *Nagar Panchayat Kurwai and another v. Mahesh Kumar Singhal and ors.*, reported in (2013) 12 SCC 342, has held that Nagar Panchayat, is a unit of self-government, which is a sovereign body having

both constitutional and statutory status and considerable powers are conferred on it to carry out various schemes for economic development and social justice at the local level.

41. In view of above discussion as well as law laid down by the Hon''ble Supreme Court, we do not find any merit in the petition, which is accordingly dismissed, so also the pending application(s), if any. Interim order, if any, stands vacated. No order as to costs.