

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1182 of 2005

Date of decision: 03.03.2015

Umed Singh & others

...Petitioners

Vs.

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Sachin Mittal, Advocate, for the petitioners.

Mr. Vivek Saini, Assistant Advocate General, Haryana.

HEMANT GUPTA, J. (ORAL)

Challenge in the present writ petition is to the notifications dated 26.10.2004 and 27.10.2004 (Annexures P-1 & P-2 respectively), whereby an area of Village Milakpur from the Sabha area of Gram Panchayat Mirzapur Block Pataudi, District Gurgaon was constituted as a separate Gram Panchayat of Village Milakpur.

We do not find any illegality to the constitution of separate Gram Panchayat of Village Milakpur. The constitution of a Gram Panchayat is a legislative function. A Division Bench of this Court in CWP No.17225 of 2008 titled '**Gram Panchayat, Manne Majra & others Vs. State of Punjab & others**' decided on 02.04.2012 has examined a similar issue and found that the challenge to the constitution of a separate Gram Panchayat cannot be entertained assuming it to be a administrative function. The Bench observed as under:

“In view of the above, it can be held that a legislative act is the creation and promulgation of a general rule of conduct without

reference to particular cases, whereas an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. Legislation is the process usually operating in future, administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases. An adjudication, on the other hand, applies to specific individuals or situations. But, these are only a broad distinctions. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. The said factors have been applied for holding that the fixation of price under the provisions of the Essential Commodities Act or tariff under the Electricity Act, 2003, are legislative in nature. Such principles have been applied even in respect of the constitution of the Municipality or extension of its limits, the reference to such judgments is made hereinafter.

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Similar is the view of the in the other judgments relied upon by learned counsel for the respondents (sic – petitioners) i.e Madan Lal's (sic - Mohan Lal's) case (supra) and Indian Sucrose Limited Vs. Secretary, Department of Local Bodies, (2006) 4 RCR (Civil) 56. The judgments referred to by the learned counsel for the petitioner proceed on the assumption that a notification constituting a Municipality or extending its municipal limits is administrative in nature. Such assumption was probably for the reason that the provisions of the Act contemplate an opportunity of hearing. In none of the judgments referred to by the learned counsel for the petitioner, the distinction between the administrative and legislative functions was brought to the notice of the Court, which has been subject matter of consideration before the larger Benches of the Hon'ble Supreme Court. In respect of the Municipalities as also other analogous provisions, even the Full Bench judgments of this Court have taken the similar view. Therefore, reliance of the learned counsel for the petitioner on the Division Bench judgments of this Court or the judgment of the Supreme Court in Baldev Singh & others Vs. State of Himachal Pradesh & others AIR 1987 SC 1239,

is of no help to petitioner. The judgment in Baldev Singh's case (supra) has been considered in other cases and has been distinguished. Therefore, we find that action of the State Government in notifying constitution of the Municipality or extending its limit is a legislative function and the same, does not require an opportunity of hearing. But since the statute contemplates an opportunity of hearing, the rigour of grant of opportunity of hearing is not the same as is required for an administrative or quasi judicial function nor such opportunity can deem to include opportunity of personal hearing.

The material in the shape of the report of the committee and non agricultural activities have been taken into consideration by the State Government before constituting such Municipality within the meaning of Article 243Q of the Constitution (Part-IX of the Constitution) and Section 4 of the Act. There was prior publication of the notification of the constitution of the municipality in terms of the Section 4 of the Act. The petitioners have not filed any objections whereas, the objections filed have been considered. The procedure contemplated under Section 4 has been complied with. Equally we do not find any merit in the argument raised by the learned counsel for the petitioner that Panchayat cannot be dissolved by such action. The decision of the State Government constituting the Notified Area Committee is in larger public interest keeping in view the non agricultural activities, which were found to be in existing in the area in question and is in tune with the changing times, as has been noticed by the Hon'ble Supreme Court in State of U.P. Vs. Pradhan Sangh Kshettra Samiti, 1995 Supp (2) SCC 305."

For the reasons recorded in Gram Panchayat, Manne Majra case (supra), we do not find any merit in the present writ petition. The same is dismissed. .

(HEMANT GUPTA)
JUDGE

03.03.2015
Vimal

(LISA GILL)
JUDGE