

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.18459 of 2015(O&M)**

**Date of decision: 14.10.2015**

**Som Prakash and others**

**....Petitioners**

**VERSUS**

**State of Haryana and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA**

**HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. Amit Jhanji, Advocate for the petitioners.

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**HEMANT GUPTA, J.**

The challenge in the present writ petition is to the notification dated 19.06.2015 whereby Gram Panchayat Radaur was declared to be a Municipality by merging villages Chhotabans and Radaur, the said notification being in violation of Section 2-A of the Haryana Municipal Act, 1973 (for short 'the Act').

The petitioners are residents of village Radaur and voters of Gram Panchayat. The State Government has issued a notification dated 19.06.2015 constituting Municipality Radaur by merging Gram Panchayat of village Radaur and Chhotabans. It is pointed out that there was Municipal Committee Radaur from the year 1922 till 2000 when a notification was issued under Section 7(1) of the Haryana Panchayati Raj Act, 1994 (for short "the Act") and Section 8 (1) of the Act abolishing the

Municipal Committee Radaur and other Municipal Committees and in turn constituting Gram Panchayat. Subsequently, notification dated 28.03.2006 was issued constituting the Municipal Committee Radaur which was withdrawn on 21.09.2006.

A writ petition bearing CWP No.17436 of 2006 titled Lila Krishan v. The State of Haryana and others, was filed challenging the abolishing of Municipal Committee. The said writ petition was dismissed on 18.02.2014 (Annexure P-8) wherein it was held that the issuance of a notification by the State Government under Section 8 of the Act is a legislative act in character. It was observed as under:-

“19. In the wake of the above, we unhesitatingly record that the power exercisable, under Section 8 of the 1973 Act, by the Government is not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principles of natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that the issuance of a notification by the State Government under Section 8 to abolish any Municipality declared under Section 3 is an act legislative in character in discharge of legislative functions, in context of the provisions of the Act. Thus could be termed as conditional legislation.”

It is thereafter, the present notification has been issued which is subject matter of challenge in the present writ petition. Learned counsel for the petitioners refers to a Division Bench judgment of this Court in V.K. Kapoor and others v. State of Haryana and others, 2011(1) R.C.R. (Civil) 15, wherein challenge to the constitution of Municipal Corporation, Panchkula was set aside for the reason that the guidelines to constitute a Municipality was not adhered to. It may be stated that in an appeal against the said order before the Hon'ble Supreme Court, in Civil Appeal

No.7002-7004 of 2011 titled State of Haryana and others v. V.K. Kapoor and others, decided on 24.02.2015, the order passed by this Court has been found to be redundant. After observing so, the Court observed that the observations in the order will not affect the pendency of other cases on similar issues. The order reads as under:-

“1. Constitution of the Panchkula Municipal Corporation by merging certain Municipal Bodies as well as the Gram Panchayats was challenged before the High Court. The High Court accepted the challenge. Resultantly, these appeals have been filed wherein an interim order was passed staying the operation of the order of the High Court. Pursuant to the said interim order of this Court, the constitution of the Municipal Corporation was re-notified and, furthermore, elections to the said body were held in June 2013. It is not in dispute that some of the respondents, who were the writ petitioners before the High Court, had participated in the election and some of them are stated to have been elected as Members and are accordingly functioning as the Councilors of the Municipal Corporation.

2. As an elected body has come into place in which some of the aggrieved writ petitioners themselves are members we are of the view that, regardless of the question(s) of law that may arise, we ought not to answer the same in the present appeals. Disturbing the elected body, at this stage, would be highly undesirable and disproportionate and, therefore, is an exercise that this Court ought to refrain from. We order accordingly by saying that the judgment of the High Court has become redundant in view of the subsequent developments. However, our aforesaid observation is only insofar as the present appeals are concerned and will not affect the pendency of other cases on similar issues which may be presently pending before the High Court.

3. The appeals are disposed of in the above terms.”

In respect of another notification of abolishing of Municipal Committee, Radaur itself, this Court has held that abolition is a legislative action as per the extract reproduced above.

In fact, a Division Bench of this Court in CWP No.17225 of 2008 titled Gram Panchayat, Manne Majra and others v. State of Punjab and others, decided on 02.04.2012, has also held that establishment of a Municipal Committee is a legislative function. The relevant extract from the said judgment reads as under:-

“Similar is the view of the in the other judgments relied upon by learned counsel for the petitioners i.e Madan Lal v. State of Punjab, (2009) 2 RCR (Civil) 536 and Indian Sucrose Limited v. 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 and ors vs. State of Himachal Pradesh and ors, 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.”

Thus, we find that a notification constituting Municipality or a notification abolishing Municipality is an act of legislation and thus cannot

be impugned on the grounds which are available for administrative or quasi-judicial orders. Noticing the difference between the legislative and administrative function, Division Bench in Gram Panchayat, Manne Majra's case (supra), 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.”

Apart from the aforesaid judgment, a Division Bench in Gram Panchayat Bassi Sekhan v. State of Punjab and others, (2009) 1 RCR (Civil) 242, has also taken the same view that act of constitution of a Municipality is legislative act.

We also find that apart from the fact that judgment in the case of V.K. Kapoor (supra) has been found to be redundant by the Supreme Court but the distinction between an administrative function or the legislative function was not brought to the notice of the Court nor the

judgments of Larger Benches of the Hon'ble Supreme Court as considered in Gram Panchayat, Manne Majra's case (supra) were referred for the perusal of the Court. Therefore, the said judgment does not lay down a binding precedent for this Court.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

**(HEMANT GUPTA)**  
**JUDGE**

**OCTOBER 14, 2015**  
'D. Gulati'

**(HARI PAL VERMA)**  
**JUDGE**