

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.504 of 2011
Date of Decision: July 31, 2018

Chand & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: None for the petitioners.

Mr. B.R.Mahajan, Advocate General, Haryana with
Mr. Samarth Sagar, Addl. Advocate General, Haryana.

AMIT RAWAL, J.

The short point involved in the present writ petition is whether the Government is competent to exercise the powers conferred under sub-section (2) of Section 3 of the Haryana Municipal Corporation Act, 1994 (for short, 1994 Act) in declaring the Municipal Council, Rohtak as a Municipal Corporation, Rohtak by adding rural area.

The grievance of the petitioners, in short, is that as per the provisions of Section 2-A of the Haryana Municipal Act, 1973 and sub-section (2) of Section 3 of 1994 Act, before promulgation for converting the Municipal Council by adding few villages as Municipal Corporation, no opportunity of hearing was given or any objections were sought. In support

of the aforementioned submission, reliance has been laid to the provisions of Articles 243-E and 243-P of the Constitution of India to submit that Metropolitan area means an area having a population of ten lacs or more comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas specified by the Governor by public notification to be a Metropolitan area.

Mr. B.R. Mahajan, learned Advocate General, Haryana assisted by Mr. Samarth Sagar, learned Additional Advocate General, Haryana submitted that the controversy in this regard has already been set at rest by the Division Bench of this Court in **Som Prakash and others Versus State of Haryana and others**, Civil Writ Petition No.18459 of 2015, decided on 14.10.2015, while considering the judgment rendered by Hon'ble the Supreme Court in **Baldev Singh and others Versus State of Himachal Pradesh and others**, AIR 1987 SC 1239, wherein it has been held action of the Government in notifying constitution of the Municipality or extending its limit is a legislative function, which does not require any opportunity of hearing.

We have heard the learned Advocate General, Haryana and appraised the paper book.

Sub-section (2) of Section 3 of 1994 Act reads as under:-

“The Government may, from time to time, by notification in the official Gazette, declare any municipality including area comprising rural area or a part thereof, if any, to be a Corporation known as “the Municipal Corporation of (Name of Corporation)”

From the plain and simple reading of the aforementioned provision, it is clear that the Government is vested with power to

promulgate the municipality and there is no provision for affording any opportunity.

Similar proposition came to be debated upon in the judgment cited supra, wherein, while noticing the ratio decidendi culled out in the judgment rendered therein, i.e., **Gram Panchayat, Manne Majra and others Versus State of Punjab and others, Civil Writ Petition No.17225 of 2008**, decided on 02.04.2012, it has been held that no opportunity of hearing for the purpose of extending its limit or constitution of Municipality is required to be given to the local areas being a legislative function. 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. Constitution of Municipality and conversion of Municipal Council by adding few villages into Municipal Corporation is in the domain of the legislature and, thus, cannot be questioned. For the sake of brevity, relevant portion of the judgment reads thus:-

“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 it 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.”

We cannot remain unmindful of the fact that the writ petition is pending adjudication since 2011 without any interim stay, therefore, cause of action allegedly accrued no longer survives.

As an upshot of our reasoning, the writ petition is dismissed.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 31, 2018
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No