

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No.23425 of 2018
Date of Decision: September 14, 2018

Malkeet Singh

...Appellant

Versus

The State of Punjab & others

...Respondents

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

Present: Mr. Navraj Singh Mahal, Advocate
for the petitioner.

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 Punjab Municipal Corporation Act, 1976 (for short, 1976 Act) in extending the boundaries of Municipal Corporation, Jalandhar by including twelve villages, namely, Sufi Pind, Rehmanpur, Alandinpur, Halotali, Alipur, Sansarpur, Dhina, Nagpal Karar Khan, Khusropur, Subhana and Pholriwal.

Mr. Navraj Singh Mahal, learned counsel representing the petitioner submitted that as per the impugned notification, the resolution by the then Municipal Corporation was passed on 25.03.2013 for extending the boundaries of the Municipal Corporation, but no action was taken on the aforementioned resolution. It was only vide notification dated 04.05.2017 issued under Section 3 of 1976 Act, the objections/suggestion were invited.

The manner in which the aforementioned villages are sought to be included is wholly unwarranted in law. There is no legal justification for inclusion of the villages in the Municipal Corporation, Jalandhar as the impugned action would deprive the villagers of proper representation in the form of a Municipal Councilor for looking after their interest. The respondents have not considered the submissions made by way of objections/suggestions that their impugned action will adversely affect the agriculture pursuits.

It was next contended that most of the residents are below poverty line and their livelihood depends upon small work, dairy farming etc. Their houses are in 2-3 marlas of land. The Gram Panchayats, as per the scheme of the Government, are providing work to jobless poor people and on inclusion of the aforementioned villages, they would be deprived of benefit of NAREGA Scheme.

We have heard the learned counsel for the petitioner and appraised the paper book.

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.

Sub-section (2) of Section 3 of 1976 Act reads as under:-

“(2) Where an area is specified as a larger urban area under

sub-section (1), the Government shall, by a notification in the Official Gazette, constitute a Corporation for such area.”

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.”

For the reasons stated above, no case for interference is made out. Resultantly, writ petition stands dismissed.

**(RAJESH BINDAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

September 14, 2018
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No