Neutral Citation No. - 2024:AHC:175928-DB

A.F.R.

RESERVED

Case :- WRIT - C No. - 34710 of 2022

Petitioner :- Gram Panchayat And Another
Respondent :- State Of U P And 4 Others
Counsel for Petitioner :- Anoop Kumar Mishra,Sr. Advocate
Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra,J.
Hon'ble Jayant Banerji,J.

(Per : Hon'ble Jayant Banerji, J.)

1. This writ petition has been filed challenging the notification no.3130/9-1-2022-88T.A./22 Lucknow dated 13.10.2022 issued by the State Government in exercise of powers under clause (2) of Article 243-Q of the Constitution of India read with sub-section (2) of Section 3 of the Uttar Pradesh Municipalities Act, 1916[1] including the areas specified in the Schedule appended to the notification in the transitional area of Nagar Panchayat Barsana in District Mathura for purpose mentioned in Part IX-A of the Constitution. The petitioners are aggrieved by this notification insofar as it relates to inclusion of Gram Panchayat Barsana Dehat in the aforesaid transitional area of Nagar Panchayat Barsana.

Also under challenge is an order dated 20.9.2022 passed by the District Panchayat Raj Officer, Mathura pursuant to the notification dated 15.9.2022 issued by the State Government, which is a draft notification published for information to all concerned and with a view to invite objections and suggestions as required under sub-section (1) of Section 4 of the Act, 1916 whereby it has been directed that in respect of the works that have been executed with

1 Act, 1916

regard to the village corpus accounts pertaining to Gram Panchayat, payments of the same would be done on priority basis. It was further directed that no further amount would be credited to the corpus account of the Gram Panchayats and if any works are executed by the Gram Panchayat in anticipation of funds, they would be responsible for the same.

2. The facts as appearing from the record of the writ petition are that the petitioner no.2 was elected as Pradhan of Gram Panchayat Barsana Dehat, Vikas Khand-Nand Gaon, Tehsil-Goverdhan, District Mathura for the term of 2021-2026 with the present term of the petitioner being slated to be continued till 1.2.2026; that ten work orders were issued by the Gram Panchayat and approximately 40% of the works have been completed; that 80% of the population of the Gram Panchayat is extremely poor and jobless and most of the persons are dependent upon the facilities provided by the State Government in scheme such as MNREGA, Khadi Gramodhyog etc.; that the petitioner-Gram Panchayat, is famous for its various religious and historical places; that a notification no.2775/9-1-2022-88 T.A./22 Lucknow dated 15.9.2022 was issued by the Governor in exercise of powers under clause (2) of Article 243-Q of the Constitution read with sub-section (2) of Section 3 of the Act, 1916 proposing to include several areas including the areas of Gram Panchayat Barsana Dehat in the transitional area of Nagar Panchayat Barsana with a view to invite objections and suggestions in respect thereof as required under sub-section (1) of Section 4 of the Act, 1916. This notification provided that objections or suggestions, if any, with respect to the proposed notification should be sent in writing addressed to the Pramukh Sachiv, U.P. Shasan, Nagar Vikas, Anubhag-I, Bapu Bhawan, Lucknow. It was specified that only such objections and suggestions shall be taken into

consideration as are received within **seven days** from the date of publication of that notification in the Gazette. Admittedly, this notification was published in the Gazette on 15.9.2022. The area of Barsana Dehat is also included in the Schedule to the notification. An objection dated 19.9.2024 was sent by the petitioner no.2, *inter alia,* to the Pramukh Sachiv by recorded delivery of India Post bearing Consignment No.EU 910597843IN. It is stated with proof that the item was delivered on 20.9.2022 (as per tracking report). It is stated that the objection filed by the petitioners has not been considered prior to issuing the notification dated 30.10.2022 under sub-section (2) of Section 3 of the Act, 1916 and the area of Barsana Dehat has been included in the transitional area of Nagar Panchayat Barsana.

3. The contention of the learned counsel for the petitioners is two fold. **Firstly**, it is contended that as per the mandate of Section 4 of the Act, 1916, since the objection of the petitioners having been demonstrated to have been received by the addressee at its office within the time specified in the notification aforesaid dated 15.9.2022, the respondents were bound to consider the same and that having not been done, the notification dated 13.10.2022 under sub-section (2) of Section 3 of the Act, 1916 is liable to set aside insofar as inclusion of the area of Barsana Dehat in the transitional area of Nagar Panchayat Barsana is concerned. **Secondly**, it is stated that 80% families in village Gram Panchayat Barsana Dehat are poor and belong to the labourer class, who are availing benefit of the scheme in MNREGA for purposes of their livelihood and inclusion of the area of Barsana Dehat in Nagar Panchayat Barsana would be violative of the criteria prescribed in the Government Order dated 10.11.2014 that has been enclosed as Annexure-10 to

the writ petition. Learned counsel for the petitioners in support of his contentions has relied upon a judgment of this Court in the case of **Surjit & 5 Ors. vs. State of U.P. & 2 Ors.**[2] and the judgment of the Supreme Court in the case of **State of U.P. & Ors. vs. Pradhan Sangh Kshetra Samiti & Ors.**[3].

4. In the counter affidavit filed on behalf of the respondent nos.1 and 2, it has been stated that the notification under Section 4(1) of the Act, 1916 was issued on 15.9.2022 providing opportunity of filing objections within seven days and the said notification was published in two daily newspapers of 18.9.2022. The objections/suggestions that were received within the time provided in the notification dated 15.9.2022 were decided on 26.9.2022 by the State Government. It has further been stated that as per record, the petitioners' objection dated 19.9.2022 was not received within the time provided under the notification dated 15.9.2022 and, therefore, there was no occasion to consider the objection of the petitioners; that a total of 14 objections were received till 23.9.2022, which was decided by the State Government on 26.9.2022; that the State Government through Government Orders dated 31.1.2015 and 23.11.2020 prescribed the standards / criteria for inclusion of any area in transitional area of a Nagar Panchayat as per the Act, 1916. The copies of the Government Orders have been enclosed along with the counter affidavit.

5. It is pertinent to mention here that the statement of the petitioners that objection was filed on 19.9.2022 and the copy of the same had been forwarded/sent to the respondent no.1 by way of

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2 2022 (11) ADJ 111 (DB)
3 (1995) Supp2 SCC 305

registered post as well as by email, which was received by the office of the respondents on 20.9.2022, has not been specifically denied. A copy of the objections dated 19.9.2022 alongwith proof of despatch by recorded delivery as well as the tracking report have been enclosed as Annexure-6 to the writ petition.

6. It has been urged by learned Additional Advocate General appearing for the State of U.P. that a total of 14 objections were received by the State Government which had been duly decided by means of the orders passed on 26.9.2022 and duly recorded in an office memorandum of 26.9.2022 filed alongwith the counter affidavit. The contention is that no opportunity of hearing was required to be given to the petitioners and, moreover, the objections raised by the petitioners in the letter dated 19.9.2022 are substantially the same as raised by other 14 objectors whose objections were duly considered and decided on 26.9.2022. It is stated that no useful purpose would be served in considering the objections of the petitioners dated 19.9.2022 separately as the same stood addressed while disposing of the aforestated 14 objections on 26.9.2022. In support of his contention, learned Additional Advocate General has relied upon the judgment of the Uttarakhand High Court in **Narendra Singh Rana vs. State of Uttarakhand & Ors.**[4] and a judgment of a Division Bench of this Court in **Nagar Palika Parishad & Ors. vs. State of U.P. & Ors.**[5].

7. Sections 4, 3 and 5 of the Act, 1916 read as follows:-

> "**4. Preliminary procedure to issue notification.** - (1) Before the issue of a notification referred to in Section 3, the Governor shall publish in the Official Gazette and in a paper approved by it for purposes of publication of public notices, published in the district or, if there is no such paper in the district, in the division in which the local area covered by the notification is situate and

4 AIR 2017 UTTARAKHAND 3
5 2010 (3) ADJ 703 (DB)

cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned a draft in Hindi or the proposed notification along with a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice.

(2) The Governor shall, before issuing the notification consider any objection or suggestion in writing which it receives from any person, in respect of the draft within the period stated.

3. Declaration etc. of transitional area and smaller urban area. -(1) Any area specified by the Governor in a notification under clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be a transitional area or a smaller urban area, as the case may be.

(2) The Governor may, by a subsequent notification under clause (2) of Article 243-Q of the Constitution, include or exclude any area in or from a transitional area or a smaller urban area referred to in sub-section (1), as the case may be.

(3) The notifications referred to in sub-sections (1) and (2) shall be subject to the condition of the notification being issued after the previous publication required by Section 4 and notwithstanding anything in this section, no area which is, or is part of, a cantonment shall be declared to be a transitional area or a smaller urban area or be included therein under this section.

5. Effect of including area in transitional area or smaller urban area. - Where by a notification referred to in sub-section (2) of Section 3 the Governor includes any area in a transitional area or smaller urban area, such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions, issued or made under this or any other enactment and in force throughout the transitional area or smaller urban area, at the time immediately preceding the inclusion of the area."

8. A perusal of sub-section (1) of Section 4 of the Act, 1916 reflects that it mandates that before the issue of a notification referred to in Section 3, the Governor shall publish in the Official Gazette and in a paper, approved by it for purposes of publication of public notices, published in the district or, if there is no such paper in the district, in the division in which the local area covered by the notification is situate and cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned, a draft in Hindi of

the proposed notification alongwith a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice. Sub-section (2) of Section 4 mandates the Governor to consider any objection or suggestion in writing which it receives from any person in respect of the draft before issuing the notification under Section 3.

Therefore, the draft notification in Hindi is mandated to be published: (i) in the Official Gazette; (ii) in a paper approved by the Governor for purposes of publication of public notices published in the district; (iii) or, if there is no such paper in the district, in the division in which the local area covered by the notification is situate; (iv) cause to be affixed at the office of the District Magistrate; and (v) at one or more conspicuous places within or adjacent to the local area concerned specifying that draft will be taken into consideration on the expiry of the period as may be stated in the notice. It is evident that the legislation mandates wide, effective and mandatory notice so that the persons living within the area or areas covered by the draft notification have adequate opportunity of accessing information about the proposed transition of those areas as contemplated under Article 243-Q of the Constitution. Sub-section (2) of Section 4 gives a democratic right to every person living in the area sought to be be covered by the notification to submit any objection or suggestion in writing in respect of the draft within the period stated therein.

9. Sub-section (3) of Section 3 of the Act, 1916 provides that the notification referred to in sub-sections (1) and (2) of Section 3 shall be subject to the condition of the notification being issued after the previous publication required by Section 4. As such, the essential requirement of compliance of Section 4 has been

highlighted by this provision of Section 3 of the Act, 1916.

10. Section 5 of the Act, 1916 provides the consequence of a notification referred to in sub-section (2) of Section 3 made by the Governor mandating such area to become subject to all notifications, rules, regulations, bye-laws, orders, directions, issued or made under the Act, 1916 or any enactment and in force throughout the transitional area or the smaller urban area at the time immediately preceding the inclusion of the area.

11. Thus, the notification under Section 3 visits the persons living in the area notified with several civil consequences that may include taxation on properties, deprivation of benefits from government programs and schemes for village areas, etc. Under such circumstances, which may bring about drastic changes in the various aspects of lives of persons, the opportunity of making objections and /or suggestions after publication of draft notification and due consideration of the same by the Governor, are vital and mandatory requirements of the statute. It is true that there is no issue regarding deprivation of property of the petitioners, however, it is a matter of consideration that collective benefits that accrue to people living in the gram panchayat area prior to such notification are sought to be taken away in the name of perceived benefits of such area being included in the Nagar Panchayat. Therefore, each person resident of such area which is subject to such notification, is a stakeholder and is conferred a right by the Act, 1916 to make suggestions and objections as the case may be. Such suggestions and objections, when duly filed, have to be accorded due consideration by the Governor, and the State Government cannot brush aside an objection by means of a general denial on the ground

that it was not received within the time provided in the draft notification where it has been demonstrated by the petitioner that the objection was duly dispatched and the delivery report of the postal department reflects its delivery to the addressee.

12. Now to consider the contention on behalf of the respondents that the objections of the petitioner are the same as those raised by other 14 objectors which were duly considered, a bare perusal of the objections filed by the petitioner reflects otherwise.

13. Annexure 6 to the writ petition is the letter sent by the petitioners, which is dated 19.9.2022. This letter reads as under:-

> " सेवा में, दिनांकः 19.09.2022
>
> श्रीमान प्रमुख सचिव
> उत्तर प्रदेश शासन नगर विकास अनुभाग
> बापू भवन लखनऊ
>
> विषय- ग्राम पंचायत बरसाना देहात को नगर पंचायत बरसाना के विस्तार के संबंध में उत्तर प्रदेश सरकार द्वारा दिनांक 15/17/9/2022 संख्या 2775/9-1-22-88 टी०ए-/22 के संबंध में आपत्ति
>
> महोदय,
>
> आपको अवगत कराना है कि ग्राम पंचायत बरसाना देहात में 80% परिवार गरीब एंव मजदूर हैं जो कि "MGNREGA" के तहत मजदूरी करके ही अपना जीवन यापन करते है। यदि उसे नगर पंचायत बरसाना में सम्मिलित किया तो बहुत परिवारों का रोजगार बंद हो जाएगा और बेरोजगारी उत्पन्न हो जाएगी। एंव माननीय मुख्यमंत्री जी द्वारा सृजित योजनाएं जैसे कि खादी ग्राम उद्योग, महिला सशक्तिकरण के लिए NRLM एंव अन्य सरकारी योजनाओं से ग्रामीण वंचित हो जाएंगे। नगर पंचायत बरसाना का यदि सीमा विस्तार होता है तो गरीब व्यक्ति पर घर कर, जल कर एंव बिजली कर अतिरिक्त वसूल किया जाएगा। जिससे मजदूर वर्ग के लोगों पर अतिरिक्त बोझ बढ़ जाएगा और उनको जीवन यापन करने में कठिनाइयों का सामना करना पड़ेगा। जिन ग्राम पंचायतों को सीमा विस्तार में बढ़ाया गया है उनमें पिछले वर्ष 2021 में त्रिस्तरीय पंचायत चुनाव हुए हैं जिससे ग्राम प्रधान एंव सदस्य निर्वाचित हुए है संविधान के अनुसार एक जनता द्वारा चुने हुए प्रतिनिधि को हटाना गलत होगा। मथुरा जिले की जिन ग्राम पंचायतों का सीमा विस्तार हुआ है वहां पर 2021 में कोई भी चुनाव नहीं कराया गया है जैसे गोवर्धन में जतीपुरा एंव आन्यौर एंव राधा कुंड में राधा कुंड देहात। ग्राम पंचायतों में विकास कार्य ग्राम प्रधानों द्वारा

शासन के आदेश अनुसार किया जा रहा है एंव गरीब जनता की भलाई हेतु कई कार्य युद्ध स्तर पर चल रहे हैं। उन पर बहुत प्रभाव पड़ेगा अथवा जिसका सीधा असर गरीब जनता पर होगा। अतः बरसाना नगर पंचायत के विस्तार में ग्राम पंचायत बरसाना देहात के मजदूर वर्ग, ग्राम प्रधान एंव ग्राम पंचायत के सदस्यगण को आपत्ति है।

अतः महोदय से निवेदन है कि ग्राम पंचायत बरसाना देहात की जनता के हित में जनता द्वारा चुने हुए प्रधान के द्वारा कराए जा रहे कार्यो को उनके कार्यकाल पूरा होने तक ग्राम पंचायत बरसाना देहात को नगर पंचायत बरसाना के विस्तार की कार्यवाही रोक दी जाए और ग्राम पंचायत बरसाना देहात को ग्राम पंचायत ही रहने दिया जाए।

सधन्यवाद

प्रार्थी

बीना देवी(ग्राम प्रधान), ग्राम पंचायत सदस्य एंव ग्रामवासी
ग्राम पंचायत बरसाना देहात
विकासखंड नंदगाव/तहसील-गोरवर्धन
जिला-मथुरा "

14. The aforesaid letter reflects that apart from the objection that 80% of the families are poor and belonged to the labour class, who are carrying on the livelihood by working as labour under the MNREGA Scheme, and that many of the families would lose their livelihood and will become unemployed, it has also been stated that various Schemes initiated by the Chief Minister relating to Khadi Gramodhyog, Women Empowerment and other Government Schemes would not be available; that many development schemes are being got done by the Gram Panchayat on a war footing for the benefit of poor public which would be directly affecting the poor public; that Panchayat elections at three levels were held in the previous year 2021, in which the Gram Pradhan and members had been elected, and, therefore, it would be wrong to remove the elected representatives in view of the Constitution of India. It is pertinent to note that the aforesaid letter has also been signed by about 40 other persons. Annexure-3 to the counter affidavit contains the decisions of the Government taken on the objections received

from 14 other persons in the concerned Gram Panchayat. Perusal of those objections reflects that though certain issues are common, however, other objections that have been raised in the objections filed by the petitioners do not find mention in the objections considered and disposed of by the Government. The objections appearing in Annexure CA-3 to the counter affidavit are collated and are as follows:-

"(i) चरित्र प्रमाण पत्र, जाति प्रमाण पत्र, निवास प्रमाण पत्र, आय प्रमाण पत्र, विधवा पेंषन, वृद्धावस्था पेंषन, मृत्यु प्रमाण पत्र आदि बनवाने में समस्या

(ii) मनरेगा योजना के अन्तर्गत 300 से अधिक श्रमिक बेरोजगार हो जायेंगे

(iii) अष्टसखियों के गाँव का अस्तित्व समाप्त हो जायेगा

(iv) नगर पालिका में गॉव सम्मिलित होने के कारण बिजली यूनिट का रेट बढ जायेगा एवं गृहकर, जलकर टैक्स भी लागू हो जायेंगे

(v) नगर पालिका बनने से तहसील का परिवर्तन हो जायेगा"

15. In the case of **Sujit Kumar** (supra) relied upon by learned counsel for the petitioners, this Court observed that the object of Section 4 is to provide opportunity to the general public to file objections against the proposal. The objection could be on various aspects, which is an invaluable right conferred in the general public, with avowed object of strengthening their hands in all facets of local self governance.

16. The judgments relied upon on behalf of the respondents are of no assistance to the respondents.

In the judgment in the case of **Narendra Singh Rana** (supra), other connected writ petitions were also decided. The case of the petitioner in one petition was that there was no warrant for notifying the Panchayat in question as a Nagar Panchayat. Primarily, reliance was placed on a Government Order of 1986 that specified various conditions for declaring a Nagar Panchayat. In

another connected writ petition, the case of the Government was that no objections were received within time and, therefore, the contention was that without considering any of the objections, the area had been notified as Nagar Panchayat. The Court observed in paragraph 14 thereof that for constituting an area into a Nagar Panchayat, the Government is obliged to follow the procedure laid down in Section 4 of the Municipalities Act. Objections are to be invited and the objections which are received within the time are to be considered. On the contention raised by one of the counsel for the petitioner therein that the petitioner was not given an opportunity of being heard, the Court observed that if the objections which are filed in time are considered and the decision is taken, then it may not be open to challenge on the ground that the person was not given a personal hearing. The Court observed as follows:-

> "24. Principles of natural justice are the contribution of the courts towards the cause of justice. Principles of natural justice are observed in various contexts and in various ways. In some situations, the right to represent against a proposed action would suffice. In other cases, it may be necessary to give a right of personal hearing. Even a right of personal hearing may be afforded to a person unaided by service of a legal practitioner in some situations; but, there may be situations, which may demand that a person be assisted by a qualified practitioner of law which alone would satisfy the requirements of justice. Therefore, it would all depend on the context, the object, the implications involved in the practicality of complying with the various aspects of natural justice and far more importantly, the actual provisions of the governing statute."

17. In the aforesaid case of **Narendra Singh Rana**, the petitioner therein placed reliance on the decision of the Supreme Court in the case of **Baldev Singh & Ors. vs. State of Himachal Pradesh & Ors.**[6], wherein the Supreme Court had considered the case of **State**

6 (1987) 2 SCC 510

of Orissa vs. Sridhar Kumar Mallik[7] and it was noted that the Orissa Act provides in clear terms a right of hearing, whereas Section 256 of the Himachal Pradesh makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to the citizens unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. Under the facts and circumstances, the Court in **Narendra Singh Rana** observed that it would not be proper to invalidate the notification under the Act in question on the ground that the petitioner was not given an opportunity of hearing. It is pertinent to mention here that in that case the objections of the petitioner were considered. However, the Court was of the opinion that matters being raised in the petition that seek a merit review cannot be a valid ground to maintain the writ petition. There was, however, one aspect in the case of **Narendra Singh Rana** that troubled the Court which appears in paragraph 40 of the judgment and reads as follows.

> "40. There is one aspect, which we must, however, indicate, which troubles us. In these cases, we notice that seven days' time alone was granted for the filing of the objections and suggestions when publication was made under Section 4. It is not as if the matter is so urgent that such a short notice is to be given. Though the petitioners have not raised any complaint as such against the short period, and we need not actually pronounce on this; but, we certainly think that in future, Government must apply its mind to it and give reasonable time to persons concerned to raise objections for proposal and also apply its mind to the matter."

18. In the cited case of **Nagar Palika Parishad**, one of the challenges made to the notification was that the extension of the area of Nagar Palika Parishad was hurriedly taken without issuing and publishing the primary notification as provided under Section

7 AIR 1985 SC 1411

4(1) of the Act, 1916. The Court found the challenge on this aspect to be baseless inasmuch as a draft notification under Section 4 of the Act, 1916 was published in the official Gazette and objections were invited. Certain objections/suggestions were received which included a representation of the petitioner. All the representations were considered and it was found by the Court that the other representations that were duly decided in detail with reasons, were on the same line as that of the petitioner's representation and, therefore, the contention that the objections of the petitioner were not decided with reasons, was found to have no force.

19. However, in the instant case, the facts are different. The objections of the petitioners were never considered. Under the circumstances, the notification and the order impugned in the writ petition cannot be sustained so far as they relate to Village Barsana Dehat.

20. The writ petition is, accordingly, **allowed** and the impugned notification dated 13.10.2022, insofar as it relates to Village-Barsana Dehat, Vikas Khand-Nand Gaon, Tehsil-Goverdhan, District Mathura, is quashed and the order dated 20.9.2022 passed by the respondent no.5, insofar as it relates to Village-Barsana Dehat is quashed.

Order Date :- 11.11.2024
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