

SUPREME COURT OF INDIA

Kamal Jora

Vs.

State of Uttarakhand

C.A.No.4835 of 2013

(A.K.Patnaik and Gyan Sudha Misra JJ.)

01.07.2013

JUDGMENT

A. K. PATNAIK, J.

1. Leave granted.

2. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 21.12.2011 of the Division Bench of the Uttarakhand High Court in Special Appeal No.289 of 2011.

Facts of the case

3. The relevant facts very briefly are that the appellant was elected as the Chairman of the Municipal Council, Haridwar, in May, 2008. When he was functioning as the Chairman of the Municipal Council, Haridwar a notification was issued on 20.05.2011 by the Government of Uttarakhand notifying that the Governor of Uttarakhand in exercise of powers under Section 3(2) of the Uttar Pradesh Municipal Corporations Act, 1959 (for short 'the Act') as applicable in Uttarakhand read with Article 243Q(2) of the Constitution and Section 8-AA of the Act has dissolved the Municipal Council, Haridwar, and appointed the District Magistrate, Haridwar, as Administrator for administering the area of the Municipal Corporation, Haridwar. The appellant filed Writ Petition No.1031 of 2011 on 20.05.2011 in the High Court of Uttarakhand, challenging the aforesaid notification mainly on the ground that no opportunity of hearing was given to the

Municipal Council, Haridwar before the notification was issued and the learned Single Judge of the High Court who heard the writ petition held in his order dated 09.06.2011 that the dissolution of the Municipal Council, Haridwar was done and the Administrator was appointed to administer the areas of Municipal Corporation, Haridwar under Section 8-AA of the Act without affording any opportunity of hearing or a show cause to the Municipal Council and hence the notification dated 20.05.2011 was in clear violation of the Constitution of India. By the order dated 09.06.2011, the learned Single Judge, therefore, allowed the writ petition and quashed the notification dated 20.05.2011 and directed the District Magistrate, Haridwar to handover the charge forthwith to the elected representatives of the Haridwar Municipality.

4. Aggrieved, the State of Uttarakhand filed Special Appeal No.104 of 2011 before the Division Bench of the High Court contending that the upgradation of the Municipal Council, Haridwar to Municipal Corporation, Haridwar, was done by the State Government in accordance with the mandate in Article 243Q of the Constitution and the dissolution of the Municipal Council, Haridwar was merely a consequence of such an upgradation and hence no show cause or opportunity of hearing was required to be given to the Municipal Council, Haridwar before the dissolution and before appointment of an Administrator to administer the areas of the Municipal Corporation, Haridwar. The Division Bench of the High Court in its judgment dated 23.06.2011, however, held that Section 8-AA of the Act does not provide for automatic dissolution of the Municipal Council on upgradation to a Municipal Corporation and since automatic dissolution of a Municipal Council has not been provided in the law, an opportunity of hearing should have been given to the persons likely to be affected by dissolution of the Municipal Council. The Division Bench of the High Court, therefore, upheld the order dated 23.06.2011 of the learned Single Judge and dismissed the appeal but on the prayer of the learned Advocate General stayed the operation of the order dated 23.06.2011 of the learned Single Judge for a period of three weeks.

5. Soon after the judgment dated 23.06.2011 of the Division Bench of the High Court, the Government of Uttarakhand issued a public notice dated 29.06.2011 stating therein that in the opinion of the State Government, the small urban area of the Municipal Council, Haridwar needs to be converted into a larger urban area and consequently to Municipal Corporation, Haridwar. By the public notice dated 29.06.2011, the Chairman and the Councilors of Municipal Council, Haridwar and the entire public residing in the urban area of the Municipal Council, Haridwar

were invited to give their objections and suggestions. The public notice dated 29.06.2011 also stated that on 13.07.2011, a hearing would be conducted by the Principal Secretary, Urban Department, Government of Uttarakhand between 1.30 p.m. to 4.00 p.m in which persons will be given an opportunity of personal hearing on their objections and suggestions and only thereafter the final decision will be taken by the State Government. By a corrigendum dated 08.07.2011 issued by the State Government, the date of hearing was altered to 16.07.2011. The appellant filed his objections before the Director of Urban Development in July, 2011 and also stated in his objection that he be given a personal hearing on his objections. Thereafter, on 21.07.2011, the Government of Uttarakhand issued two notifications. In one notification dated 21.07.2011, it was stated that the Governor was pleased to notify for overall development of Haridwar city the conversion of existing smaller urban area into a larger urban area in exercise of powers under Section 3(2) of the Act read with Article 243Q(2) of the Constitution and to further notify that the area included in the larger urban area would be the total of the area of Municipal Corporation, Haridwar. In the other notification dated 21.07.2011, it was stated that the Governor has directed under Section 8-AA(1) of the Act that the existing Municipal Council, Haridwar would stand dissolved from the date of issuance of the notification and the District Magistrate, Haridwar be appointed the Administrator for the administration of the larger urban area of the Municipal Corporation, Haridwar.

6. Aggrieved by these two notifications dated 21.07.2011, the appellant again filed Writ Petition (C) No.1533 of 2011, contending that no hearing was granted to the Municipal Council, Haridwar before the Municipal Council was dissolved and the Administrator was appointed for the larger urban area of the Municipal Corporation and hence the two notifications were liable to be quashed. The learned Single Judge by his order dated 15.12.2011 allowed the writ petition and quashed the two notifications dated 21.07.2011. Aggrieved, the State of Uttarakhand and the District Magistrate, Haridwar filed Special Appeal No.289 of 2011 before the Division Bench of the High Court and the Division Bench of the High Court held in the impugned judgment dated 21.12.2011 that an opportunity of being heard was given to all persons who were interested in the decision making process of the Municipal Council, Haridwar. By the impugned judgment, the Division Bench of the High Court therefore allowed the appeal and set aside the order of the learned Single Judge and dismissed the writ petition. Aggrieved, the appellant has filed this appeal.

Contentions of the learned counsel for the parties:

7. Mr. Vijay Hansaria, learned counsel appearing for the appellant, submitted that under Article 243U(1) of the Constitution and under Section 10-A of the U.P. Municipalities Act, 1916, every Municipality has the right to continue for a period of five years from the date of its first meeting unless sooner dissolved under any law for the time being in force. He submitted that the proviso to Article 243U(1) of the Constitution says that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. He submitted that the learned Single Judge of the High Court in his judgment dated 09.06.2011 in Writ Petition No.1031 of 2011 and the Division Bench of the High Court in its judgment dated 23.06.2011 in Special Appeal No.103 of 2011, therefore, held that the Municipal Council, Haridwar, was entitled to an opportunity of hearing before it was dissolved and before the Administrator was appointed by the notification dated 20.05.2011. He submitted that after the judgment of the Division Bench of the High Court on 23.06.2011, the Government of Uttarakhand invited objections/suggestions by a public notice dated 29.06.2011, but no hearing was given to the Municipality and yet the Haridwar Municipality was again dissolved and an Administrator was appointed in its place by the impugned notification dated 21.07.2011 of the Government of Uttarakhand.

8. Mr. Hansaria submitted that it is a settled proposition of law that if a statute conferring power on an authority to take a decision having civil consequences does not expressly prohibit a personal hearing before the decision is taken, the rule of fair play requires that an opportunity of personal hearing is afforded to the persons likely to be affected by the decision. In support of this proposition, he cited the decisions in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* [(1978) 1 SCC 405], *S.L. Kapoor v. Jagmohan & Ors.* [(1980) 4 SCC 379] and *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664]. He submitted that Section 8-AA of the Act which empowers the State Government to dissolve a Municipal Council for the purpose of constituting a Municipal Corporation in its place does not expressly prohibit an opportunity of hearing to be given to the Municipal Council before its dissolution and therefore a personal hearing to the Municipal Council has to be granted where the State Government is of the opinion that the Municipal Council is to be dissolved for the purpose of constituting a Municipal Corporation in its place.

9. Mr. Hansaria next submitted that it will be clear from the language of sub-section (1) of Section 8-AA of the Act that dissolution of a Municipal Council is to take place only if the State Government is of the opinion that until the due constitution of the Municipal Corporation for the larger urban area, “it is expedient” to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator. He submitted that there is nothing in the notifications dated 21.07.2011 of the State Government to show that the State Government formed the opinion that it was expedient to dissolve the Municipal Council and to appoint the Administrator.

10. In reply, Dr. Abhishek Atrey, learned counsel appearing for the State of Uttarakhand, on the other hand, submitted, relying on the counter affidavit filed on behalf of respondents no. 1 and 2 as well as the order dated 19.07.2011 of the Government of Uttarakhand annexed to the counter affidavit as Annexure-C-I, that the Division Bench of the High Court has rightly held in the impugned judgment that a personal hearing was granted by the public notice dated 29.06.2011 to all concerned including the Municipal Council, Haridwar. He cited the decision of this Court in State of Maharashtra & Ors. v. Jalgaon Municipal Council & Ors. [(2003) 9 SCC 731] in which the notification dated 16.10.2001, as amended by the notification dated 15.11.2001, dissolving the Jalgaon Municipal Council was held to satisfy the requirement of the principles of natural justice. He further submitted that in the judgment dated 26.02.2010 in Nagar Palika Parishad & Ors. v. State of U.P. & Ors. (Writ Petition (C) No.56954 of 2009) the Allahabad High Court has held that dissolution of a Municipality of a smaller urban area for the purpose of upgradation to Municipal Corporation of a larger urban area cannot be termed as dissolution as envisaged under Article 243U of the Constitution and the proviso to Article 243U is not violated if no opportunity of hearing is given to the Municipality before such dissolution. He submitted that though Special Leave Petition (C) No.13400 of 2010 was filed against the aforesaid judgment dated 26.02.2010 of the Allahabad High Court, this Court dismissed the Special Leave Petition with costs by order dated 25.08.2010.

Findings of the Court

11. We have considered the submissions of learned counsel for the parties and we are of the opinion that the earlier judgment of the Division Bench of the High

Court dated 23.06.2011 holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, Haridwar though not binding on this Court is binding on the parties in Special Appeal No.104 of 2011 in which the aforesaid judgment was rendered because of the principle of res judicata. The State Government of Uttarakhand was the appellant in the aforesaid Special Appeal No.104 of 2011 and it cannot therefore now contend that a hearing was not required to be granted to the Municipal Council, Haridwar, before it issued the two notifications dated 21.07.2011 dissolving the Haridwar Municipality and appointing an Administrator.

12. Hence, the first question that we have to decide is whether an opportunity of hearing was granted to the Municipal Council, Haridwar before the two notifications dated 21.7.2011 were issued dissolving the Haridwar Municipality and appointing an administrator under Section 8-AA of the Act. The public notice which was issued on 29.06.2011 soon after the judgment dated 23.06.2011 of the Division Bench of the High Court in Special Appeal No.104 of 2011 is extracted hereinbelow:

“Under Section 3 sub-section (2) of Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act No.2 of 1959) (as applicable in the State of Uttarakhand) read with Article 243 U of Part 2, it is the considered opinion of the State Government that smaller Urban Area Nagar Palika Parishad, Haridwar be converted into a larger Urban Area and consequently into a Municipal Corporation, Haridwar.

In view of the above, the Chairman of Nagar Palika Parishad, Haridwar, the councilors of Nagar Palika Parishad, Haridwar and the entire public who ordinarily reside in the said area are invited to give their objections and suggestions. The written objections and suggestions should reach the office of Director, Department of Urban Development, Uttarakhand 43/6, Mata Mandir Marg Dharmpur, Dehradun by 11th July 2011. Any suggestion and objection received after the said notified date will not be accepted. On the receipt of the written objections and suggestions, a hearing would be done on 13th July 2011 by Principal Secretary, Urban Development Department, Government of Uttarakhand in the office of Director, Department of Urban Development, Uttarakhand 43/6, Mata Mandir Marg, Dharmpur, Dehradun. The time would be 1.30 P.M. to 4.00 P.M. During the hearing the persons would also be given an opportunity of personal hearing. After receiving such

objections and suggestions and after considering the same, the final decision to convert the place into a larger Urban Area will be taken.”

It will be clear from the aforesaid public notice dated 29.06.2011 issued by the Government of Uttarakhand that the Chairman of the Haridwar Municipality, the Councilors of Haridwar Municipality and the entire public who ordinarily reside in the area were invited to give their objections and suggestions. It will also be clear from the public notice dated 29.06.2011 extracted above that on receipt of the written objections and suggestions, a hearing was to be conducted on 13th July 2011 by Principal Secretary, Urban Development Department, Government of Uttarakhand between 1.30 p.m. to 4.00 p.m. and during the hearing the persons were to be given an opportunity of personal hearing on the objections. By a subsequent corrigendum the date of hearing was altered to 16.07.2011. We further find from paragraph 4 of the order dated 19.07.2011 annexed to the counter affidavit filed on behalf of respondent Nos. 1 and 2 as Annexure C-I that the Principal Secretary Urban Development Department, Government of Uttarakhand has provided an opportunity of hearing to the objectors on their respective objections on 16.07.2011 from 11.00 a.m. to 3.00 p.m. at Kumbh Fair Controlling House, Haridwar and amongst the objectors there were several Municipal Councilors of Haridwar Municipality, namely Dinesh Joshi, Rakesh Prajapati, Yashoda Devi, Leela Devi, Ashok Sharma, Jagdhir Singh, Nikhil Mehta, Idris Ansari, Satya Narayan, Karuna Sharma, Sanjay Sharma, Radhey Krishna, Prabha Ghai and Ram Ahuja. Hence, the appellant, who was the Chairman of the Municipal Council, Haridwar could have also participated in the hearing in support of his objections. We cannot, therefore, find any infirmity in the impugned judgment of the Division Bench of the High Court that an opportunity of hearing was actually given to all persons likely to be affected by the two notifications dated 21.07.2011.

13. At the time of hearing of this appeal, we were inclined to consider the other contention of Mr. Hansaria that the State Government must form an opinion that until the due constitution of the Municipal Corporation for an area, “it is expedient” to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator appointed by the State Government in view of the language of sub-section (1) of Section 8-AA of the Act. But we find that this ground was not raised in the Writ

Petition before the High Court nor raised in the special leave petition before this Court. We further find that pursuant to the two notifications dated 21.07.2011, the elections to the Municipal Corporation have been notified to be held and completed by 30.04.2013. Hence, even if the appellant succeeds on this point, we cannot direct restoration of the Haridwar Municipality after the constitution of the Municipal Corporation, Haridwar. For these reasons, we refrain from considering this question in this appeal and leave this question open to be decided in some other appropriate case.

14. In the result, we do not find any merit in this appeal and we accordingly dismiss the same, but without costs.