2022 INSC 289

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1814 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 28102 OF 2015)

STATE OF RAJASTHAN .....APPELLANT(S)

VERSUS

ASHOK KHETOLIYA & ANR .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The present appeal is directed against an order passed by the High Court of Judicature of Rajasthan dated 28.4.2015 whereby a notification dated 12.8.2014 declaring Gram Panchayat Roopbas, District Bharatpur as Municipal Board was set aside. The High Court found that no public notification as contemplated under Article 243Q(2) of the Constitution of India has been produced specifying Gram Panchayat Roopbas as a "transitional area" and thus, it cannot be declared as a Municipal Board.

2. The Constitution (Seventy-Fourth Amendment) Act, 1992 introduced Part IXA in the Constitution which came into force on 20.4.1993. The

Statement of Objects and Reasons as was published in the Gazette on 16.09.1991 when the Bill was introduced is as under:

> "In many States local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government.
>
> 2. Having regard to these inadequacies, it is considered necessary that provisions relating to Urban Local Bodies are incorporated in the Constitution particularly for-
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> (i) putting on a firmer footing the relationship between the State Government and the Urban Local Bodies with respect to-
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> (a) the functions and taxation powers; and
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> (b) arrangements for revenue sharing;
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> (ii) Ensuring regular conduct of elections;
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> (iii) ensuring timely elections in the case of supersession; and
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> (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.
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> 3. Accordingly, it is proposed to add a new part relating to the Urban Local Bodies in the Constitution to provide for-
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> (a) constitution of three types of Municipalities:
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> (i) Nagar Panchayats for areas in transition from a rural area to urban area;
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> (ii) Municipal Councils for smaller urban areas;
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> (iii) Municipal Corporations for larger urban areas. The broad criteria for specifying the said areas is being provided in the proposed article 243-0;
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> (b) composition of Municipalities, which will be decided by the

Legislature of a State, having the following features:

(i) persons to be chosen by direct election;

(ii) representation of Chairpersons of Committees, if any, at ward or other levels in the Municipalities;

(iii) representation of persons having special knowledge or experience of Municipal Administration in Municipalities (without voting rights);

(c) election of Chairpersons of a Municipality in the manner specified in the State law;

(d) constitution of Committees at ward level or other level or levels within the territorial area of a Municipality as may be provided in the State law;

(e) reservation of seats in every Municipality-

(i) for Scheduled Castes and Scheduled Tribes in proportion to their population of which not less than one-third shall be for women;

(ii) for women which shall not less than one-third of the total number of seats;

(iii) in favour of backward class of citizens if so provided by the Legislature of the State; (iv) for Scheduled Castes, Scheduled Tribes and women in the office of Chairpersons as may be specified in the State law;

(f) fixed tenure of 5 years for the Municipality and re-election within six months of end of tenure. If a Municipality is dissolved before expiration of its duration, elections to be held within a period of six months of its dissolution;

(g) devolution by the State Legislature of powers and responsibilities upon the Municipalities with respect to preparation of plans for economic development and social justice, and for the implementation of development schemes as may be required to enable them to function as institutions of self-government;

(h) levy of taxes and duties by Municipalities, assigning of such taxes and duties to Municipalities by State Governments and for making grants-in-aid by the State to the Municipalities as may be provided in the State law;

(i) xx xx xx”

3. Article 243ZF of the Constitution mandated that any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of Part IXA shall continue to be in force until amended or repealed by a competent Legislature or any other competent authority or until the expiration of one year from such commencement whichever is earlier. Article 243ZF reads thus:

> “243-ZF. Continuance of existing laws and Municpalities. - Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:
>
> Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.”

4. Therefore, Article 243ZF of the Constitution is in the context of

mandating the State Legislature to amend the State laws to be in conformity with Part IXA of the Constitution. The objects and reasons of introducing Part IXA in the Constitution were that local bodies had become weak and ineffective on account of variety of reasons such as failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. The Urban Local Bodies were also not able to perform effectively as vibrant democratic units of self-government. Therefore, when Part IXA was introduced, Parliament was aware that the competent legislature to legislate on the subject of the Urban Local Bodies was the State legislature but Part IXA of the Constitution had given constitutional status to the Municipalities. The States were put under constitutional obligation to adopt Municipalities as per systems enshrined in the Constitution.

5. Entry 5 of the Seventh Schedule List II reads thus:

> "5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

6. In view of such mandate and its legislative authority, the State of Rajasthan had enacted the Rajasthan Municipalities Act, 2009[1]. Section 2 Clauses (xxxix) and (lxv) of the Municipalities Act read as under:

> "(xxxix) "municipal area" means the territorial area of a Municipality as notified by the State Government from time to time;
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> xx xx xx

1 For short, the "Municipalities Act"

(lxv) "a transitional area", "a smaller urban area" or "a larger urban area" means an area specified under Article 243Q of the Constitution of India;"

7. Article 243Q of the Constitution and Section 5 of the Municipalities Act are reproduced hereunder:

Constitution of India	**Rajasthan Municipalities Act, 2009**
243Q. Constitution of Municipalities. —(1) There shall be constituted in every State,— (*a*) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area; (*b*) a Municipal Council for a smaller urban area; and (*c*) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part: Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an in-	Section 5 of the Municipalities Act 5. Establishment and incorporation of Municipality. – (1) In every transitional area, there shall be established a Municipal Board and every such Municipal Board shall be a body corporate by the name of the Municipal Board of the place by reference to which the Municipality is known and shall have perpetual succession and a common seal and may sue or be sued in its corporate name. (2) In every smaller urban area, there shall be established a Municipal Council and every such Municipal Council shall be a body corporate by the name of the Municipal Council of the city by reference to which the Municipality is known and shall have perpetual succession and a common seal and may sue and be sued in its corporate name. (3) In every larger urban area, there

dustrial township. (2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.	shall be established a Municipal Corporation and every such Municipal Corporation shall be a body corporate by the name of the Municipal Corporation of the city by reference to which the Municipality is known and shall have perpetual succession and a common seal and may sue and be sued in its corporate name: Provided that a Municipality under this Section may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by notification, specify to be an industrial township: Provided further that having regard to the cultural, historic, tourist or other like importance of an urban area, the State Government may, by notification in the Official Gazette, exclude such area from the Municipality and constitute, or without excluding such area from the Municipality constitute in addition to the Municipality, a development authority to exercise such powers and discharge such functions in the said area as may be prescribed and

	notwithstanding anything elsewhere in this Act, may, in relation to such area, delegate, by notification in the Official Gazette, such municipal powers, functions and duties to the said authority as it may think appropriate for the proper, rapid and planned development of such area.

8. We find that the High Court has misread the scope of Part IXA of the Constitution and Article 243Q of the Constitution contemplating that the transitional area has to be notified under such provision. The scheme of the Constitutional Amendment is not to take away legislative competence of the State Legislatures to legislate on the subject of local Government but it is more to ensure that the three tiers of governance are strengthened as part of democratic set up.

9. Dr. Manish Singhvi, learned senior counsel for the State has referred to the judgments of this Court reported as ***Tulsipur Sugar Co. Ltd.*** v. ***The Notified Area Committee, Tulsipur***[2] and ***Sundarjas Kanyalal Bhatija & Ors.*** v. ***Collector, Thane, Maharashtra & Ors.***[3] to contend that the power to declare Municipal Board or a Municipality is a legislative function which is discharged by the State by issuing a notification on behalf of the Hon'ble Governor. The notification issued by the Hon'ble Governor is in fact a notification issued by the State

2 (1980) 2 SCC 295
3 (1989) 3 SCC 396

Government. The provisions of Section 5 of the Municipalities Act are not inconsistent in any manner with Article 243Q of the Constitution and thus, Section 5 of the Municipalities Act is a legal and valid provision and the notification has been issued in exercise of the powers conferred by the statute. The High Court has thus erred in law to quash the notification issued.

10. On the other hand, Ms. Yadav, learned counsel for the respondents, did not dispute that the notification issued under Section 5 of the Municipalities Act is a legislative function but she contended that firstly there has to be a notification under Article 243Q of the Constitution and only thereafter the Government can issue a notification constituting a Municipal Board under Section 5 of the Municipalities Act. She relies upon judgments of this Court reported as ***Pune Municipal Corporation & Anr.*** v. ***Promoters and Builders Association & Anr.***[4] and ***MGR Industries Association & Anr.*** v. ***State of Uttar Pradesh & Ors.***[5]. Reliance is also placed upon judgment of this Court reported as ***Champa Lal*** v. ***State of Rajasthan & Ors.***[6].

11. This Court in ***Tulsipur Sugar Co. Ltd.*** held as under:

> "7. We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under Section 3 of the Act which does not require the State Government to make such

4 (2004) 10 SCC 796
5 (2017) 3 SCC 494
6 (2018) 16 SCC 356

declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with the nature of functions of a non-judicial authority, Prof. S.A. De Smith in *Judicial Review of Administrative Action* (3rd Edn.) observes at p. 163:

> "However, the analytical classification of a function may be a conclusive factor in excluding the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides."

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9. We are, therefore, of the view that the maxim "audi alteram partem" does not become applicable to the case by necessary implication.

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17. We are, therefore, of the view that a notification issued under Section 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and that it cannot be characterised as a piece of subordinate legislation. In view of the foregoing, we hold that the contention of the plaintiff that the declaration made by the State Government under Section 3 of the Act declaring the area in which the sugar factory of the plaintiff is situated as a part of the Tulsipur town area is invalid is not tenable."

12. In ***Sundarjas Kanyalal Bhatija***, a draft notification proposed the formation of a "Kalyan Corporation" by merging municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. The State Government

issued a notification excluding Ulhasnagar from the proposed corporation. The High Court found that the decision to exclude Ulhasnagar was taken by the Government abruptly and in an irrational manner. This Court held as under:

> "27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs"."

13. In ***Champa Lal***, this Court had struck down a notification issued by the Governor of the State of Rajasthan holding that in the absence of notification which meets the requirement of Article 243Q(2), the entire exercise undertaken by the State of Rajasthan in upgrading the Napasar Village Gram Panchayat to be a Nagarpalika is inconsistent with the requirements provided thereof under the Constitution.

14. We find that such judgment is not in tune with the scheme of the Constitution and is contrary to a three-Judge Bench judgment of this Court reported as ***Parmar Samantsinh Umedsinh*** v. ***State of***

Gujarat & Ors.[7] wherein the *vires* of the Gujarat Provincial Municipal Corporation Act, 1949 were subject matter of challenge on the ground that the State law has provided more than one representative from a single Ward and, thus, this provision is inconsistent with the provisions of Article 243R and Article 243S of the Constitution. This Court held as under:

> "19. The power of competent Legislature, i.e., State Legislature in the light of enabling provisions provided in the Constitution with regard to framing of laws concerning Legislature cannot be whittled down by way of restrictive interpretation as contended by the appellants. The State Legislature in federal set up specially in the matter of local Government are to enable enough seats to adopt the reservation based on local body.
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> 35. The ratio which can be culled out from the above judgment is that power of the State to legislate within its legislative competence is plenary and the same cannot be curtailed in the absence of an express limitation placed on such power in the Constitution itself.
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> 36. Article 243ZF provides that any law relating to municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of Part IXA, shall not continue beyond expiration of one year from commencement of the constitutional amendment. Thus, Part IXA of the Constitution categorically contemplated that any law made by State Legislature, which is inconsistent with the provisions of Part IXA shall cease to operate on the expiration of one year or till amended or repealed by a competent Legislature, whichever is earlier. The Constitution provisions, thus, mandates that any law of the State, which is inconsistent, cannot continue. Thus, this limitation shall also govern any law made after enforcement of Constitution (Seventyfourth Amendment) Act. Thus, a law, which

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is inconsistent with Part IXA cannot be framed by the State Legislature.

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38. One of the meanings of expression “inconsistent” as approved by this Court is mutually repugnant or contradictory. Article 254 of the Constitution contains a heading “inconsistency between laws made by the Parliament and the laws made by the Legislature of the State” whereas under Article 254(1) and Article 254(2) the words used are repugnant. The Constitution itself, thus, has used the words inconsistency and repugnancy interchangeably. To find out as to whether a law made by State Legislature is inconsistent with provisions of Part IXA of the Constitution, the principles which have been laid down by this Court to determine the repugnancy between the law made by the Legislature of a State and law made by Parliament can be profitably relied on. We, thus, need to notice the principles on which the repugnancy of law made by State and law made by the Parliament is found out.

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50. Thus, the Legislature of a State may by law has to provide all matters relating to or in connection with election to the Municipalities, which includes filling of the seats in the Municipality by person chosen by direct election. Articles 243R and 243ZA does not give any indication as to whether from territorial constituency, i.e., the Wards, whether only one member has to be elected in the Municipality or it can be multiple member constituency. The constitutional provisions of Article 243R, which provides for composition of Municipalities and that of Article 243ZA does not give any indication to the above. The provisions of Article 243ZG, which deals with bar to interference by courts in electoral matters throws some light…

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59. We have analysed the provisions of Article 243R, 243S and have come to the definite conclusion that no limitation in Article 243S can be found of which contains any prohibition of having more than one member for a Ward.

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> 63. We, in the present case, after analysing the relevant provisions of Part IXA of the Constitution has come to the conclusion that there is no prohibition or limitation in Part IXA of the Constitution prohibiting the State Legislature from making a law providing for election of more than one member from one territorial constituency, i.e., Ward."

15. In ***State of U.P. & Ors.*** v. ***Pradhan Sangh Kshettra Samiti & Ors.***[8]**,** this Court was considering the Constitution (Seventy-third Amendment) Act, 1992. Article 243C in Part IX of the Constitution is similar to Article 243Q in Part IX-A of the Constitution. The High Court had struck down the definition of Village, Gram Sabha and Panchayat Area under the U.P. Panchayat Raj Act, 1947 as *ultra vires* the respective definitions given in Part IX of the Constitution. This Court held as under:

> "3. On coming into force of the said Constitutional Amendment, the States were required by the Centre to take steps to organise village panchayats on the lines of the provisions of the said Constitutional Amendment by making law or amending the existing law suitably. .....
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> xxx xxx xxx
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> 11. The panchayats are to be constituted at the village, intermediate and district levels and the "panchayat area" as defined by Article 243(*e*) means the territorial area of the panchayat whether at the village, intermediate or district levels. What is necessary to remember further is that while as per Article 243(*c*) "intermediate level" is a level between the village and district levels, as specified by the Governor, the 'district' as per Article 243(*a*) means a district in a State the boundaries of which may be changed by the State Government. The district is

8 1995 Supp (2) SCC 305

not required to be specified by the Governor whereas village and intermediate levels have to be specified by him for the purposes of the said Part of the Constitution.

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36. As regards the objection of the High Court that whereas Article 243(*g*) requires the Governor to specify the village, the Act gives this power to the State Government to do so, the High Court has failed to notice the provisions of the Constitution which equate the Governor with the State Government in exercise of his functions except where he is by or under the Constitution required to exercise the functions in his discretion……

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44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in *Hingir-Rampur Coal Co. Ltd.* v. *State of Orissa* [(1961) 2 SCR 537 : AIR 1961 SC 459] . In this case, the petitioner-mineowners, had among others, challenged the method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested in the light of other relevant circumstances. It is not permissible to challenge the vires of a statute solely on the ground that the method adopted for the recovery of the impost can and generally is adopted in levying a duty of excise."

16. Since the local Government falls in entry 5 of List II of the Seventh Schedule, therefore, it is the State Legislature alone which is competent to legislate in respect of the municipalities with only one limitation that the provisions of the State Act cannot be inconsistent

with the mandate of the Scheme of Part IXA of the Constitution. The scheme of Part IXA of the Municipalities Act does not contemplate a separate notification under Article 243Q of the Constitution and thereafter under Section 5 of the Municipalities Act. As Section 5 of the Municipalities Act is not inconsistent with any provisions of Article 243Q of the Constitution, therefore, two notifications are not contemplated or warranted under the Scheme of Part IXA or the Municipalities Act as reproduced in the table above.

17. The State Government is competent to divide the Municipalities in the State into classes according to their income or other factors like population or importance of the local area and other circumstances as provided under Section 329 of the Municipalities Act. In terms of Section 329, a notification was issued on 30.4.2012 determining the category of the Municipal Corporation/Municipal Council/Municipal Board. The said notification reads as under:

"No. P .8 (Ga) ( ) Rule/Category/LSG/12/3825 Dated 30/4/12

:- Notification:-

In connection with the partition of the category of municipalities and superseding all the notifications issued earlier in relation to the categorization of Municipal Councils by exercising the powers rendered in Section 329 read with Section 337 of Rajasthan Municipal Act, 2009 (Act No. 18 of year 2009), the State Government hem by determines the category of all the Municipal Corporation/Councils/Board which follows as under:-

(1) Greater Urbanized area (Municipal Corporation)	-	Urbanized area of population of 5 lacs
(2) Small urbanized area	-	All urbanized area and all

(Municipal Council)		district headquarters (except Municipal Corporation) having population of more than 1 lac and less than 5 lacs.
(3) Transitional area (Municipality Board)	-	Urbanized area of 1 lac population

But State Government would have right to convert any municipal council into any category keeping in view its historical/religious/archaeological importance or in any special circumstances.

As per order of Governor
Sd.
Deputy Government Secretary"

18. Thereafter, the impugned notification dated 12.8.2014 was issued in exercise of the powers conferred on the State Government under Section 3 read with Section 329 of the Municipalities Act. The said notification reads thus:

"No.F.10(ka)Est./Category( )/DLB/14/2591 Dated 12/8/14

:- Notification:-

State Government by exercising its power U/S 3 read with Section 329 of Rajasthan Municipal Act 2009 (Act No.18 year 2009) and Notification No.P.8(.G)()Rule/Category/LSG/12/3825-4090 dated 30/4/12 hereby declares all the following Gram Panchayat areas into fourth class Municipal Councils with immediate effect.

S. No.	District	Name of Gram Panchayat	Newly constituted forth class Municipal Councils
1	Bharatpur	Roopbas	Municipal Board Roopbas

Existing Boundaries of the said Gram Panchyat (Barbar -in the

north, Gram Samahad in the south, Bhidyani and Rudh Roopwas in the east and Dorda in the west) would remain the local boundaries of newly constituted Municipal Board.

As per order of Governor
Sd.
Government Deputy Secretary"

19. The above notifications would show that the State Government had exercised powers to establish Municipality in terms of Section 5 of the Municipalities Act. Such notifications cannot be said to be illegal or arbitrary in any manner and were rightly issued in exercise of the statutory powers conferred on the State by the Legislature.

20. The argument of Ms. Yadav is that the notification is arbitrary and unreasonable, therefore, the High Court has rightly struck down the notification. Reliance is placed on the judgment reported as ***Pune Municipal Corporation*** to support such contention. In the said case, the notification amending the Development Control Rules sanctioned by the State Government under Section 37 of the Maharashtra Regional and Town Planning Act, 1966 was the subject matter of challenge. The High Court had struck down the notification amending the Development Control Rules. It was held that the Development Control Rules were legislative function, therefore, Section 36 has to be viewed as repository of legislative powers for effecting amendments to Development Control Rules. It was observed that such Rules can be challenged on the ground of it being arbitrary or unreasonable. We do not find that the said judgment in any way support the arguments

raised by the learned counsel.

21. In ***MGR Industries Association***, the appellant was claiming to be part of the industrial township so as to be exempt from the jurisdiction of Zila Panchayat. This Court examined that there has to be a notification under Section 12-A of the U.P. Industrial Area Development Act, 1976 before it is excluded from Panchayat area. Therefore, two notifications were required, one to constitute an industrial township under Section 12-A of the 1976 Act and then exclusion of Panchayat area under the Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961. The said judgment is again not helpful for the arguments raised.

22. In fact, the High Court has struck down the notification only for the reason that the notification under Article 243Q(2) was not published. Such reasoning is not tenable.

23. Thus, the order of the High Court is clearly erroneous and unsustainable in law. The same is set aside and the writ petition is dismissed. Consequently, the appeal is allowed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
MARCH 10, 2022.