(2010) 10 P&H CK 0239

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5149 of 2010

V.K. Kapoor and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision: Oct. 29, 2010

Acts Referred:

- Constitution of India, 1950 - Article 243, 243(U), 243P, 243Q, 243Q(2)
- Haryana Municipal (Amendment) Act, 1994 - Section 2A
- Haryana Municipal Act, 1973 - Section 2, 2A, 3
- Haryana Municipal Corporation Act, 1994 - Section 12, 2(29), 2(51), 2A, 3
- Himachal Pradesh Municipal Act, 1968 - Section 4(1)

Citation: (2011) 1 RCR(Civil) 15

Hon'ble Judges: M.M. Kumar, J; A.N. Jindal, J

Bench: Division Bench

Judgement

A.N. Jindal, J.

This judgment shall dispose of three connected writ petitions. One of the petition bearing No. 2493 of 2010, has been filed by an advocate whereas municipal councillors of Municipal Committee, Pinjore and Panchkula have filed writ petitions bearing Nos. 5149 and 5235 of 2010. Since all the three writ petitions involve common questions of law, therefore, the same are taken up together. However, the facts are picked up from Civil Writ Petition No. 5149 of 2010. In all the three petitions, the area, where the petitioners are residing, has been merged into the Municipal Corporation, Panchkula.

2. Challenge in the aforesaid three writ petitions is to the order dated 18.01.2010 (Annexure P-6) and notification dated 17.03.2010 (Annexure P-7), issued by the Government of Haryana, Urban Local Bodies Department, vide which a decision has been taken to declare the Panchkula Municipal Council as Municipal Corporation after merging Municipal Committees of Pinjore and Kalka. The principal grounds of

challenge are that the order (P-6) and notification (P-7) are violative of principles of natural justice; ultra vires of Article 243-P, 243-Q of the Constitution and also 2-A of the Haryana Municipal Act, 1973 as well as Section 3 of the Haryana Municipal Corporation Act, 1994. A mandamus has also been sought against the respondents not to give effect to the notification dated 17.03.2010 (Annexure P-7).

3. The major posers sought to be raised before this Court are as under:

1. Whether the constitution of the Municipal Corporation was in violation of mandatory provisions of law like Section 2-A of the Haryana Municipal Act, 1973 various provisions of Municipal Corporation Act, 1994 and Articles 243P and 243Q of the Constitution?

2. Whether the villages, which were not part of the transitional area could be merged into the Municipal Corporation without dissolving the Panchayats of those villages?

3. Whether the residents of the area as well as the three municipalities and village Panchayats were required to be given an opportunity of hearing before including such area in the Municipal Corporation?

4. In the year 2000 vide notification No. 18/4/96-2001 dated 27.07.2000, Municipal Committee of the Panchkula was upgraded to Municipal Council while adding villages known as Bhainsa Tibba, Kharak Mangoli, Majri, Haripur, Budanpur, Abheypur, Raily, Kundi, Fatehapur, Maheshpur, Devi Nagar and Banna Madanpur. The total Population of the said area as per census of 2001 was 1,78,089.

5. By 74th Amendment, Part IX-A was inserted into the Constitution of India w.e.f. 01.06.1993. This part contemplates constitution of Nagar Panchayats, Municipal Council and Municipal Corporation in every state for the purpose of administering ''a transitional area'', ''a smaller urban area'' and ''a larger urban area'' respectively. Article 243Q contemplates and uses the aforesaid expressions. Article 243Q(2) empowers the Governor to declare any area of transitional area; smaller urban area; and a larger urban area 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 the Governor may deem fit, specify by public notification for the purpose of Part IX-A of the Constitution.

6. The petitioners have averred that as per Section 2-A of the Haryana Municipal Act, 1973, (for brevity, ''the 1973 Act'') Municipalities were classified as under:

(i) "Municipal Committee" for a transitional area with population not exceeding fifty thousand.

(ii) "Municipal Council" for a smaller urban area with population exceeding fifty thousand but not exceeding three lacs and

(iii) "Municipal Corporation" for a larger urban area with population exceeding three lacs, to be governed by a separate Act: Provided that a municipality under this section may not be constituted in such urban areas or part thereof as the State Government 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 it may deem fit, by notification, specify to be an industrial township.

xx xx xx

7. The Haryana Municipal Act further created a bar on declaring the area of military cantonment or part thereof from making it part of the Municipality. The Act further provided that the transitional area (smaller urban area or a larger urban area) means such area as the State Government 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 the State Government may deem fit, specify by notification for the purpose of this section. The State Government has been further given the powers to constitute the Municipalities and specify the class thereof in accordance with the provisions of this Section after observing the procedure as laid down in Section 3 of Municipal Act, 1973. It was further provided that the Municipalities already existing on the commencement of the Haryana Municipal (Amendment) Act, 1994 would be deemed to have been constituted and notified as such under and in accordance with the provisions of this Section. A further proviso has been added in Section 2-A of the Haryana Municipal Act, amended in 1994, which reads as under:

Provided further that the State Government may, after giving a reasonable notice of not less than thirty days of its intention to do so, amend the Schedule, by notification and declare any Municipal Committee as a Municipal Council or any Municipal Council as a Municipal Committee.

8. It was pleaded that as per Section 2-A of the 1973 Act the State Government was required to issue a reasonable notice of not less than thirty days of its intention to declare a Municipal Committee as Council but with regard to creation of Municipal Corporation, the Haryana Municipal Corporation Act, 1994 (for brevity, ''the 1994 Act'') has been brought on the statute book. Section 3 of the 1994 Act has been relied upon in this regard which reads as under:

3. Declaration of Municipal area as Corporation - (1) From the 31st of May, 1994, the Municipal Corporation of Faridabad shall be deemed to have been declared as such for the Municipal Area specified in the first schedule appended to this Act.

(2) 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 the Corporation):

Provided that no municipality including area, comprising rural area or a part thereof, if any, shall be so declared to be a Corporation unless the population thereof is three lacs or more.

(3) The Government may, from time to time after consultation with the Corporation, by notification in the official Gazette, alter the limits of the Municipal area of the Corporation declared under Sub-sections (1) and (2) so as to include therein or exclude there from such areas as may be specified in the notification.

(4) When the limits of the Municipal areas are altered, so as to include therein any area, except as the Government may otherwise by notification, direct, all rules, regulation, notifications, bye laws, order, directions and powers issued or conferred and all taxes imposed under this Act; and in force in the Municipal area shall apply to such area.

(5) When a local area is excluded from the Corporation under Sub-section (3) -

(a) this Act, and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply thereto; and

(b) the Government shall after consulting the Corporation, frame a scheme determining what portion of the balance of the Corporation fund and other property vesting in the municipal Corporation shall vest in the Government and in what manner the liabilities of the Corporation shall be apportioned between the Corporation and the Government, and, on the scheme, being notified, the property and liabilities shall vest and be apportioned accordingly.

9. The petitioners have averred that though the Government, from time to time, could declare any Municipality including the area comprising of rural area or part thereof to be Corporation known as Municipal Corporation, but it could not have joined two or more than two Municipalities. They have also asserted that the villages could also not be clubbed because they could not be termed as rural area as defined under the provision of the 1994 Act. In this regard reference has been made to the definition of the Rural Area as mentioned in Section 2(51) of the 1994 Act which reads as under:

"Rural area" means the part of the Municipal area which immediately before their inclusion within the limits of the Municipal area were situated within the local limits of Gram Panchayat but shall not include such portion thereof as may, by virtue of a notification u/s 413 ceases to be included in the rural areas as herein defined.

10. By referring to the aforesaid section, the petitioners have urged that the area of 42 villages which is being added now to clear the eligibility test with regard to population for converting the Municipal Council into Corporation would not be

considered as rural area. They further urged that the village Panchayats could only be dissolved by specific notification and in the absence of such notification they could still work and do not cease to be village Panchayats and area cannot be termed as merged in the Municipal Corporation. The petitioners further urged that a Municipality could be upgraded to make it a Municipal Corporation but a number of Municipalities could not be dumped altogether to create a Municipal Corporation, but only the Metropolitan area as defined under Article 243(P)(c) of the Constitution could include two or more Municipalities. In this regard, they have referred to Section 2(29) of the 1994 Act which is reproduced as under:

2 (29) "Metropolitan area" means an area having a population of ten lakhs or more, comprised in one or more districts and constituting of two or more municipalities or panchayats or other contiguous areas, specified by the Government by notification in the Official Gazette to be the metropolitan area for the purposes of this Act.

11. Thus, the areas have been segregated and named differently for the purposes of administration on population basis. The Municipal Corporation could be declared for the area having population of three lacs or more whereas, the Metropolitan area could be declared having population of more than ten lacs. Thus, it was urged by the learned Counsel for the petitiones that on combined reading of Section 3 of 1994 Act, the Government could declare any Municipality including the area comprising in rural area or part thereof to be a Corporation. In this regard, the Government though could propose to declare an area as a Municipal Corporation but for altering the limits of the Municipal area of the Corporation, the Government was to consult the Municipal Corporation and then to declare by the notification with regard to alteration of its limits. Thereafter, the Government after deciding the objections invited by it, is required to issue second notification for declaring an area as Municipal Corporation. The notification also required to specify the applicability of all the rules and regulations in force including the bye-laws, orders, directions as also powers conferred and all taxes imposed under the 1994 Act. It has been agitated by the petitioners that the population was the sole basis to upgrade the Municipal Committee to Municipal Council and from Municipal Council as Corporation and from Municipal Corporation to Metropolitan area. The Article 243P(g) of part IX (a) of the Constitution further envisages to make the population of the preceding census as the basis for making such declaration. Under Article 243P(g), the word "population" has been defined as under:
"population" means the population as ascertained in the last preceding census of which the relevant figures have been published.

12. While referring to the last census conducted in the year 2001, the learned Counsel for the petitioners has referred to the Statistical Abstract of Haryana Gazette published in 2005-06 issued by the Economic and Statistical Adviser, Planning Department, Government of Haryana, according to which, the rural and urban population of Panchkula, Kalka and Pinjore is as under:

City		Population within Municipal Committee Councils/Corporations Limits (Census, 2001)
Kalka	:	30887
Pinjore	:	29766
Panchkula	:	140992
Total		201645

13. Thus, It has been averred that according to the last census of three towns, their total population comes to 201645 and at best population of 42 villages, which is 80328, could be added to bring the Corporation into existence. But these villages do not form the part of the rural area as defined u/s 2(51) of the 1994 Act. It is averred that the creation of the Corporation is in violation of the Government of India instructions dated 22.9.2009 (Annexure P-1) issued to all the State Governments wherein it was clearly stated that there should not be any change in the boundaries of administrative blocks after 1.1.2010 for conducting census for the next decade i.e. 2010-11. The said instructions were forwarded to the Government of Haryana vide memo dated 24.11.2009 (Annexure P-2) issued by the Financial Commissioner-cum-Principal Secretary, Government of Haryana to the Director Urban Local Bodies, Haryana wherein it is clearly mentioned that there should not be any change in the boundaries of administrative blocks after 1.1.2010. They have referred before us a copy of the said memo dated 24.11.2009 (Annexure P-2). They have further asserted that the Government of Haryana issued notification dated 12.1.2010 conveying its decision freezing all the boundaries of all the Districts, Towns, Tehsils, Villages etc. from 1.1.2010 till 31.3.2011 to facilitate the Haryana Government to undertake census operations. The notification in this regard has been referred as Annexure P-3.

14. It is further asserted that the guidelines and the criteria issued by the Government of Haryana for the formation of the Municipal Corporation has been formulated keeping in view Section 12 of the 1994 Act as well as Article 243(u) of the Constitution of India. The relevant guidelines, as referred, indicate as under:

The Government while forming the Municipal Corporation should keep in mind the urban character of the area:

(a) The people of the area to be included should predominantly be engaged in non agricultural activities to the extent of 60%.

(b) The said character can be determined only on the basis of the population determined as per the last census which in the present case was conducted in the year 2001.

15. Thus, in the absence of assessment by the authorities, regarding the involvement of 60% of the population of the area in non agricultural activities, such

an area could not be added in the Municipal Corporation. It was next submitted that in order to constitute the Municipal Corporation, Gram Panchayats to be inducted in the Corporation were also required to pass resolution to that effect followed by recommendation of the concerned Divisional Commissioner. According to the learned Counsel this is true interpretation of Section 12 of the 1994 Act as well as guidelines issued under Article 243(U) of the Constitution.

16. The other submission made by the petitioners is that neither any opportunity of hearing to the residents of the area which is to be added was afforded nor any resolution till date has been passed by the municipalities as well as gram panchayats (except few of them) submitting themselves to be a part of the Municipal Corporation, but the State Government has straightway issued a notification without following the procedure as well as guidelines issued by it on 1.1.2010 vide order dated 18.1.2010. It has also been submitted that vide notification dated 17.3.2010 the State Government not only declared the Panchkula Municipal Council as Corporation but also combined two other Municipal Committees i.e. Pinjore, Kalka and 42 other villages so also the reserved and protected forest area was made part of the urban area, which has been challenged in another Vijay Bansal v. State of Haryana Writ Petition No. 3097 of 2009. The Union of India in the said case has already submitted its reply and has clearly taken the stand that no clearance has been taken by the State of Haryana before declaring the Panchkula, Pinjore and Kalka as Urban Complex.

17. The petitioners are actually not averse to the formation of the Panchkula Municipal Corporation up to the extent that it should be done only after taking census already under process 2011 and in that case only area of Panchkula Municipal Council and surrounding areas falling in the vicinity of Panchkula Municipal Council, could serve to declare the Municipal Corporation. It is also submitted that an anomalous situation has been created by virtue of notification dated 17.1.2010 while adding two urban areas namely Pinjore and Kalka and 42 other villages and also had disturbed the census process. Learned Counsel has brought to our notice that the increasing trend of population i.e. 50.91% as per census of 2001 addition of two Municipalities and villages was not warranted by law because merger of the area of Panchkula town and surrounding areas around it, would itself be sufficient to form as Municipal Corporation without further merging other urban areas of Kalka and Pinjore in the year 2011. Ultimately while impugning the aforesaid two notifications, the learned Counsel has submitted that the same be declared illegal and void.

18. Replies to the writ petitions have been filed wherein the legal provisions as incorporated under the 1973 Act as well as the 1994 Act have not been disputed. However, it was submitted that total population of the area to be added comes to 3.18 lacs. As per present population the estimated growth is 4.66 lacs, therefore, the State Government was fully competent to constitute the aforesaid Corporation. It

has further been asserted that provisions of Article 243(P)(g) of the Constitution, Section 2(a) of the 1973 Act and also Section 4 of the 1994 Act have been fully complied with by the Government before issuing notification concerning declaration of the Panchkula Municipal Corporation. As regards the violation of the orders issued vide notification dated 22.9.2009 and the subsequent letter issued by the State Government on 24.11.2009, it has been stated that these instructions were issued to facilitate the census work and it has nothing to do with the notification in question. It has been further explained that the matter has been discussed with the Director General-cum-Census Commissioner of India who has agreed that the Census Department has no objection to the formation of the Corporation if the census operations are carried out smoothly. The Census Department has been assured that no boundaries were to be changed by formation of Corporation and the work would go on smoothly. It has also been submitted that the formation of the Corporation does not violate any provisions of the Constitution. After formation of the Municipal Corporation, Panchkula, it would be feasible to undertake larger number of development works which would be in the larger interest of the public as some of the schemes which can only be executed in the larger urban area i.e. Municipal Corporation, as the funding of the Municipal Corporation is better than the Municipal Council or the Committee. The Government of India has desired to introduce city development plan under JNNURM Scheme for Panchkula City. With the indication of the said scheme huge funds would be drained out for development of the Panchkula city which would be fruitful for greater development of the infrastructure and also to serve the public interest. It has also been mentioned that the Haryana Urban Development Authority in its Panchkula extension scheme has also extended residential/commercial sectors adjoining to the Pinjore town. With regard to the population, as per census 2001, the respondents have submitted that while adding the population of 42 villages i.e. 80328, it comes to 314657 as per census 2001 which is required for creating the Municipal Corporation, Panchkula.... As such, there is no bar on the creation of the corporation at Panchkula. In reply to para No. 10 of the writ petition it is submitted that guidelines issued vide letter dated 1.1.2010 had been duly complied with and the factors of non agricultural activities to the extent of 60% has already been determined on the basis of the last census 2001. Accordingly, notification for formation of Municipal Corporation, Panchkula has been issued strictly as per the relevant provisions of law. The respondents have also placed on record the details of the total population as per census of 2001 for Panchkula Municipal Council as well as Pinjore and Kalka Municipal Committees and also 42 Panchayats.

19. A rejoinder to the written statement has also been filed wherein the petitioners have reiterated the allegations while further adding that before constituting the municipality, the objections were to be invited from the inhabitants of the area before such notification is finalised. Section 4 of the Act further provides requirement of inviting objections from the inhabitants within six weeks of the

publication of the notification. The respondent Nos. 1 and 2 having issued guidelines on 1.1.2010 (Annexure P-4) have themselves not taken care of the same. With regard to the developmental acts, it has been submitted by the petitioners that in the State of Haryana, the responsibility of urban planning is entrusted to the Town and Country Planning, Department and not to the municipalities.

20.Before pondering over the first poser i.e. "whether the notification is in contravention of the requirement of Section 2-A of the 1973 Act, Section 3 of 1994 Act, the guidelines and the principles of natural justice?", it would be appropriate to mention that Government of Haryana issued two notifications first vide memo No. 18/1/95/2008-3C1 dated 18.1.2010 (Annexure P-6) and Notification No. 18/7/2010-3C1 dated 17.3.2010 (Annexure P-7). The memo dated 18.1.2010 (Annexure P-6) reads as under:

From

Financial Commissioner &
Divisional Commissioner,
Ambala, Rohtak and Hisar.

To

Memo No. 18/1/95/2008-3C1 dated 18.1.2010

Subject: Regarding constitution of various Municipal Corporations in the State.
Reference to the subject cited above.

In this connection, I am directed to inform you that the State Government has decided that the following Municipal Councils to be declared Municipal Corporation, as per provision made in Section 2(a) of the Haryana Municipal Act, 1973 and Section 3 of the Haryana Municipal Corporation Act, 1994:

1. Karnal

2. Panipat

3. Hisar,

4. Yamunanagar (After merging Municipal Council, Jagadhari),

5. Ambala City (After merging Municipal Council, Ambala Cantt.)

6. Panchkula (After merging Municipal Committee Pinjore and Kalka).

7. Rohtak

You are therefore requested to convene a meeting of the Committee constituted under your Charmanship as conveyed vide Govt. Letter No. 53/2/78-08-3C1 dated 1.1.2010 (Copy enclosed) for fixing the boundary of the above said Corporation

falling under your jurisdiction immediately and send the same to the Government along with notification with schedule of boundary and plan.

Sd/-
For Financial Commissioner &
Principal Secretary to Government of
Haryana, Urban Local Bodies, Department.

21. Thereafter, notification dated 17.3.2010 was issued. The relevant portion of which is reproduced as under:

Notification

Dated 17th March, 2010

No. 18/7/2010-C31

In exercise of the powers conferred by Sub-section (2) of Section 3 of the Haryana Municipal Corporation Act, 1994 (16 of 1994), the Governor of Haryana hereby declares the Municipal Council, Panchkula, Municipal Committee, Kalka & Pinjore and adjoining rural areas as shown in the drawing No. DTP(P) 1151/10 dated 10.2.2010, the area as specified in the schedule given below, to be a Corporation known as Municipal Corporation, Panchkula.

xxx xxx xxx

xxx xxx xxx

Raj Kumar
Financial Commissioner and
Principal Secretary to
Govt. of Haryana, Urban Local Bodies Department.

22. On perusal of the aforesaid two notifications, it transpires that:

(a) The State Government before issuing such notification did not call for any objection by the individuals, councils, institutions or societies of the area or Panchayats or Municipal Committees

(b) Nothing was mentioned; if the cantonment area or the forest area was excluded from its operation. The Municipal Councils were not consulted for altering or adding the area within their respective municipal limits.

(c) No draft notification was issued and these two notifications by the State Government and the other by the Governor were , directly issued for creation and declaring the Municipal Corporation consisting of the area as referred to in the notification dated 17.3.2010.

(d) Though, the area of Gram Panchayats was added, yet, no specific notification for dissolving of the gram panchayats was issued.

(e) The notification issued by the Governor of Haryana on 17.3.2010 does not record his subjective satisfaction as to whether it satisfied the guidelines issued by the Government and is in consonance with the provisions of two acts, as referred to above and Article 246(Q) of the Constitution.

23. There is no dispute regarding the proposition of law that to declare certain municipal area as ''Municipal Corporation'' is the legislative act. However, no such act could be done in contravention of the laws of the State and procedure as laid down u/s 2A of the 1973 Act as well as Section 3(2)(3) of the 1994 Act. The legislature never intended to give a go bye these provisions while creating a Municipal Corporation by upgrading Municipal Committee and Municipal Council.

24. As per provisions of Section 2-A of the 1973 Act, the classification of the municipality was made which indicates that the Municipal Corporation could be constituted only for a larger municipal area for a population of three lacs or more and is to be governed by the 1994 Act. Section 2-A further reveals that the State Government may give a reasonable notice of not less than 30 days of its intention to declare any Municipal Committee as Municipal Council or any Municipal Council as Municipal Committee. As far as Municipal Corporation is concerned, it was to be constituted as per provisions of Section 3 of the 1994 Act. There is also no denying a fact that as per Section 2-A of the 1973 Act, Municipal Council includes Municipal Committee. Section 3 of the 1973 Act, provides the procedure for declaring the Municipal Corporation. The relevant extract of the provisions is re-produced as under:

3. Procedure for declaring Municipality -

(1) The State Government may, by notification, propose any local area to be a municipality under this Act.

(2) Every such notification shall define the limits of the local area to which it relates.

(3) A copy of every notification under this section, with a translation there of in such language as the State Government may direct, shall be affixed in some conspicuous place in the Court-house of the Deputy Commissioner within whose jurisdiction the local area to which the notification relates lies, and in one or more conspicuous places in that local area.

(4) The Deputy Commissioner shall certify to the State Government the date on which the copy and translation were so affixed and the date so certified shall be deemed to be the date of publication of the notification.

(5) Should any inhabitant desire to object to a notification

issued under Sub-section (1), he may, within six weeks from the date of its publication submit his objection in writing through the Deputy Commissioner to the State Government and the State Government shall take his objection into consideration.

(6) Within six weeks from the date of the publication have expired and the State Government has considered and passed orders on such objections as may have been submitted to it, the State Government may, by notification, declare [the local area, for the purpose of this Act, to be a municipality].

(7) The State Government may, by notification, direct that all or any of the rules which are in force in any municipality shall with such exceptions and adaptations as may be considered necessary, apply to the local area declared to be a municipality under this section, and such rules shall forthwith apply to such municipality without further publication.

(8) Omitted

(9) Omitted

(10) A committee shall come into existence at such time as the State Government may, by notification, appoint in this behalf.

25. Similarly, Section 3(2) of the 1994 Act refers to the procedure for altering the limits of the Municipal Corporation so declared under Sub-section (1) and (2) so as to include therein or exclude therefrom such area as may be specified in the notification.

26. From the bare reading of the aforesaid provisions of two acts i.e. the 1973 Act and the 1994 Act, it transpires that first of all a notification is to be issued which is to be followed by calling of objections and then in consultation with the corporation, a final notification is to be issued. Thereafter Government is also required to issue notification for implementation of the directions and the rules as adopted by the Corporation accordingly. But, nothing was done in this case and the Government abruptly, without even issuing a draft notification, issued the notification while limiting the boundaries of the Corporation.

27. The doctrine of natural justice and the prudence require that all the administrative acts and decisions effecting the rights of individuals must be taken care of, after providing fair hearing to those who were adversely effected by the same. It has been laid down by the Apex Court in case The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, as under:

30. It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded

not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test it is liable to be struck down by the Courts in exercise of their judicial review jurisdiction. However, Warns Prof. H.W.R. Wade that the principle is flexible:

The Judges, anxious as always to preserve some freedom of manoeuvre, emphasise that ''it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter''. Their application resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. ''In the application of the concept of fair play there must be real flexibility''. There must also have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice." (Wade & Forsyth: Administrative Law, 8th Edn., 2000, pp 491-92).

31. The learned authors quote from two authorities in support of preserving flexibility. In Russel v. Duke of Norfolk All ER.118 E, Tucker, L.J. Opined:

The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter hat is being dealt with, and so forth.

In Lloyd v. McMahan AC 702, Lord Bridge stated in his speech (All ER p. 1161c-e)

The so-called rules of natural justice are not engraved on tablets of stones. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

(Administrative Law, ibid., at p. 493.)

28. The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision-maker. The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situation defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right

to hearing being excluded are: (i) the nature of subject matter and (ii) exceptional situation. Such exceptionality may be spelled out by (i) in the cases of urgency; (ii) in the absence of legitimate expectation, (iii) by refusal of remedies in discretion; (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, and (v) express legislation. But, they were of the stringent view that where hearing would make some difference and statutory provisions have been made for hearing, then right of hearing must predominantly be given. This principle of "audi alteram partem" has been approved by this Court in number of judgments i.e. Kamaljeet Singh v. State of Punjab through Principal Secretary to Government of Punjab, Local Government Department 2002 (3) R.C.R. (Civil) 438 : 2002 (3) P.L.R. 184 : 2002 (2) P.L.J. 189 : 2002 (4) ICC 226, Harjinder Singh and Ors. v. State of Punjab 2002 (1) R.C.R. (Civil) 610 . It may also be noticed that way back in the year 1987, the Apex Court in case Baldev Singh and Others Vs. State of Himachal Pradesh and Others, while approving the principle of natural justice and interpreting Section 4(1) of the Himachal Pradesh Municipal Act, 1968 observed as under:

...Citizens of India have a right to decide what should be the nature of their society in which they live - agrarian, semi urban or urban. Admittedly, the way of life varies, depending upon where one lives. Inclusion of an area covered by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances it is necessary that people who will be affected by the change should be given an opportunity of being heard, otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like.

29. In the instant case not only 42 Sarpanches of Gram Panchayats are losing their offices and period of their remaining tenure would remain in abeyance. The developmental work would be stopped. Similarly, municipal council and three municipal committees would lose their tenure of office before it is completed. The developmental activities which are in progress and undertaken by the Municipal Council respectively would be hampered by switching over to the constitution of a Municipal Corporation. The constitution of Municipal Corporation would result in imposition of more and higher taxes casting additional financial burden on the inhabitants of the area, therefore, it was the requirement of the natural justice and fair play that the population of the Municipal Council and the Committees would have been heard and their objections should have been decided. In Jalgaon Municipal Council''s case (supra) the objections with regard to providing them opportunity of hearing was over ruled on the ground that since the notification issued by the Maharashtra Government was just a proposal for constitution of the Municipal Corporation which could be issued without consultation as such, the same is not applicable to the facts of the present case.

30. The learned State counsel has referred before us a Division Bench judgment pronounced by this Court in case Kulraj Kataria v. State of Haryana, CWP No. 10720

of 2008, decided on 29.4.2009, in order to contend that as per the said judgment there was no requirement for giving any prior notice in case of alteration of the boundaries. The judgment has been passed while relying on a judgment of Hon''ble the Supreme Court delivered in case State of Punjab Vs. Tehal Singh and Others, wherein it was observed that the State Government under the provisions of the Municipal Act, while proceeding to alter the limits by excluding or including certain areas in a municipality is legislative in nature. Therefore, no requirement of giving any prior notice or personal hearing before declaring the area as a Municipal Corporation arises as no legal rights of the petitioners were to be infringed. The Hon''ble Division Bench further observed that since the petitioner had failed to press into service any provisions of the Act for giving any prior notice or personal hearing before declaring the Municipal Committee as Municipal Corporation, therefore, no prior notice or personal hearing was required. In this regard, it may be observed that the said judgment was passed only for extending the municipal area of Gurgaon to convert into Municipal Corporation Gurgaon whereas, in the present case not only Municipal Council Panchkula is being converted into Corporation but there is merger of two other Municipal Councils and 42 other villages which were never the part of the rural area as defined under the 1994 Act. Further Division Bench has not considered the provisions of Section 2-A and 3 of the 1973 Act and the 1994 Act respectively at that time. The Hon''ble Division Bench also did not discuss the provisions of these two acts which require the hearing of objections and the consultation of the Corporation at the time of fixing or limiting the boundaries of the Corporation.

31. We also find merit in the contention raised by Mr. Amit Jhanji, Advocate for the petitioners that necessary criteria for declaring the Municipal Committee, Municipal Council, Municipal Corporation and Metropolitan area, are size of population and the commercial activities in the area to be included amongst other factors to be discussed later on. For declaring the Municipal Corporation, Section 3(2) of the 1994 Act required that the Municipality could be declared as Municipal Corporation if its population exceeds 3 lacs. The relevant extract of the Section 3 reads as under:

3(1) xx xx xx

3 (2) 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 the Corporation):

Provided that no municipality including area, comprising rural area or a part thereof, if any, shall be so declared to be a Corporation unless the population thereof is three lacs or more.

3(3) to (5) xx xx xx

32. The Metropolitan area was to be declared by merging two or more Municipal Councils. Thus, the Haryana Municipal Corporation Act, 1994 does not any where state that the State Government was vested with the powers to merge more than one Municipal Committee to form the Municipal Corporation. Thus, it would be suffice to say that as per the 1995 Act, the State Government was not competent to declare the Municipal Corporation by merging two Municipal Committees and 42 villages which were never treated as rural area or transitional area at any time before declaring the Municipal Council.

33. It is further noticed that guidelines/criteria for constitution or abolition of any Municipal Corporation in the State has been issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Urban Local Bodies Department to all the Municipal Corporations and also to the Deputy Commissioners in the State vide memo No. 53/2/78-08-3C1 dated 1.1.2010. According to the criteria the population of that area should not be less than 3 lacs; density of the said population should be 400 persons per square kilometer for such census town; the income of the municipal corporation should be sufficient enough to meet out their own establishment charges for salary, provident fund share, pension, gratuity of its employees and other local and mandatory obligations like audit fees, repayment of loans contracted by them etc. and the expenditure on these heads should not be more than 80% of the total income of the municipality. The guideline No. 5 further provides that the residents of Gram Panchayat / Municipal Committee who want to constitute a Municipal Corporation, the Municipality/ Gram Panchayat should pass a resolution to the effect followed by the recommendation of the concerned Divisional Commissioner. In case the Municipality/ Gram Panchayat does not pass such resolution either in favour or against then the Divisional Commissioner should give his clear cut findings with reasons for constitution of Municipal Corporation in the area. There is no compliance with these guidelines. Neither the resolutions were passed by all the three Municipal Committees/ Municipal Councils nor by Panchayats of all the villages and no such order was passed by the Financial Commissioner giving clear cut findings with reasons for constitution of the Municipal Corporation in the area. Thus, declaration of the Corporation could be said to be illegal when viewed in the light of these guidelines, which were framed by the Government itself.

34. It would also be significant to mention here that Municipal Council, Panchkula was created in January, 2001 after the census of 2001 was finalised. Had there been any such position that even after adding the population of Pinjore and Kalka then the Municipal Corporation could be declared at that very time. Even now the Government is declaring the Municipal Corporation Panchkula on the basis of that census. It may further be elaborated that so far as Pinjore town is concerned, as per census conducted by the Government of India in the year 2001, the population was 29766, therefore, rightly the Municipal Council was existing. So far as Kalka is concerned, as per said census, the population was 30887 and the population of Panchkula was 140992, therefore, the Municipal Council was brought into operation.

Thus, even if a combined population of three towns is taken then it does not comes to three lacs. Now the Government wants to fulfill the population criteria by adding population of 42 villages which is against the fundamental principles and in contravention of the mandatory provisions of law. Before the area of Gram Panchayat is included in the Municipal Corporation, the Government by way of official Gazette will have to make a specific notification declaring that this rural area shall be ceased to be the part of the Gram Panchayat. Section 413 of the 1994 Act reads as under:

413. Special provisions as to rural area - Notwithstanding anything contained in the foregoing provisions in this Act:

(a) The Corporation with previous approval of the Government may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban area ;

(b) the Corporation with previous approval of the Government may, by notification in the Official Gazette,

(i) exempt the rural areas or any portion thereof from such of the provisions of this Act as it deems fit;

(ii) levy taxes, rates, fee and other charges in the rural area or any portion thereof at rates lower than those at which such taxes, fee and other charges are levied in the urban areas or exempt such area or portion from any such tax, rate, fee or other charge.

35. No such notification has been issued by the Government for dissolving the Gram Panchayats and including such area in the Municipal Corporation. The law has gone to the extent that in the absence of any notification that Gram Panchayat has ceased to exist, it could not be said to have been dissolved and had a powers to levy taxes on the land and building situated within its jurisdiction. The aforesaid view was taken in case BIMA Office Premises Co-operative Society and etc. Vs. Kalamboli Village Panchayat and Others, which reads as under:

33. At this juncture, it will be worthwhile to notice that Section 4 of the BVP Act provides for declaration of village. Every village specified in the notification issued under Clause (g) of Article 243 of the Constitution of India is known by the name of that village specified in that notification and where the circumstances so require, provision is made to include or exclude any local area from the local area of a village or to alter the limits of a village or to take away that local area from the concerned village by the notification issued, in the like manner, after consultation with the Standing Committee and upon such declaration local area is either included or excluded shall form the village with the publication of such notification the local is either included or excluded and the limits of the village, accordingly, stand altered.

Upon exclusion of the local area of the village, it ceases to be a village under the BVP Act. In the light of the said provisions, we agree with the submissions advanced by respondent No. 1 that so long as notification is not issued under Sub-section (2) of Section 4, the respondent No. 1 Gram Panchayat cannot be said to have ceased to exist. In absence of any such notification by the State, the respondent No. 1 - Gram Panchayat cannot be said to have ceased to be a Gram Panchayat within the provisions of the said Act. It is, therefore, clear that there is no substance in the contention raised by the petitioners that in view of the constitution of a site for new town u/s 113 of the MRTP Act, the respondent No. 1- Gram Panchayat has ceased to exist and, therefore, respondent No. 1- Gram Panchayat has no right to levy tax on the petitioners. In our view, so long as respondent No. 1 continues to exist as a Gram Panchayat, it has a right to levy tax on the lands and buildings situated within its jurisdiction and, consequently, action of respondent No. 1- Gram Panchayat, levying assessing and calling upon the petitioners to pay tax cannot be said to be bad and illegal.

36. Again action of the Government for declaring the Corporation being self-contradictory could not be approved. The Election Commissioner and the respondents did not take into consideration the Government of India instructions "Annexure P-1" and its own notification dated 12.1.2010 (Annexure P-3), wherein it has been stated that changes of the administrative boundaries of all the districts, tehsils, towns, villages etc. shall stand frozen with effect from 1st January, 2010 till 31st March, 2011 in order to facilitate Haryana Government to undertake census operations. It is surprising that inspite of the instructions of the Government of India, a notification issued by the Government of Haryana itself and the change in the administrative boundaries have been done by constituting Municipal Corporation, Panchkkula.

37. The inclusion of 42 Gram Panchayats to declare the Municipal Corporation is, in fact, against the intent of the Constitution itself. Article 243(Q) provides for transitional area i.e. from rural to urban area, therefore, the first step for taking the rural area into urban area is by constituting Nagar Panchayat. The State of Haryana, has defined urban area as Municipal Committee. It is also significant to mention here that the purpose of 73rd as well as 74th amendment in the Constitution was to bring maximum participation of the people in the local self government by the rural or semi urban population. The respondent- State in this case instead of decentralizing the powers is amalgamating the same in the hands of a few which body would certainly not take so close care which the smaller bodies were doing. The purpose to introduce the 73rd and 74th amendment was that once the village attains the character which is more urban in nature then the said rural area is to be put in to transitional area i.e. in the present case as a Municipal Committee and the urban character of the said rural area is to be seen from last preceding census wherein non agricultural activities, revenue generated in the local administration etc. are determined. It is only after a period and after seeing the population of that

particular area on the basis of last preceding census that the transitional area is given the second step of being converted into a Municipal Council and then into a Municipal Corporation. In the present case none of the above mandatory provisions of the Constitution as well as the 1973 Act and the 1994 Act have been followed. The act of the respondents in declaring the Corporation by inclusion of 42 Gram Panchayats has been only to fulfill the criteria of reaching the bench mark of three lacs but still the bench mark is lacking while taking the census of 2001. No public interest is going to be served by making suo moto unlawful declaration of Municipal Corporation Panchkula on the basis of 2001 census. Keeping in view the ratio of increase in population, the government could wait the census to be completed in near future and declare the Municipal Corporation Panchkula without merging of Municipal Committees of Pinjore and Kalka or any rural area. It is further noticed that the respondents did not take care to make specific observations as per guideline No. 4 of order dated 1.1.2010 (Annexure P-4) and concluded that the people of the area engaged in non agricultural activities had exceeded 60%. It would further be significant to mention that the percentage of that urban character again has to be seen from the last preceding census which in this case was conducted on the year 2001.

38. It has also been observed in case Junagadh Municipality Vs. State of Gujarat, that the discretion exercised by the Governor should not be based on his personal satisfaction. Thus, it would be suffice to say that the arbitrary exercise of the powers by the Government, being detrimental to the public interest cannot be taken as an action in support of the welfare of the State.

39. Thus, viewing the case from all the angles, it would have to be held that memo No. 18/1/95/2008-3C Dated 18.1.2010 (Annexure P-6) and notification dated 17.3.2010 (Annexure P-7) are in clear cut contravention of 73rd and 74th amendment of the Constitution so also the guidelines as well as the aforesaid provisions of the 1973 Act and the 1994 Act, therefore, the same are hereby quashed. However, the State Government would be at liberty to issue fresh notification after following due procedure as provided under the aforesaid Acts and Guidelines and in accordance with the principles of natural justice. It is further made clear that any development scheme would not be hampered and the funds allocated to the town of Panchkula under the J.N.N.U.R.M. Scheme would not go unutilized. Rather, such development schemes would remain in operation and remain unaffected during the process to constitute the Municipal Corporation, Panchkula is in operation.