

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Case No.	WP No.16904/2020
Parties Name	Kan Singh & Ors. Vs. State of MP & Ors.
Case No.	WP No.483/2019
Parties Name	Ratan Singh & Ors. Vs. State of MP & Ors.
Case No.	WP No.10833/2020
Parties Name	Ratan Singh Vs. State of MP & Ors.
Date of Order	23/03/2021
Bench Constituted	<u>Division Bench:</u> Justice Sujoy Paul Justice Shailendra Shukla
Order passed by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Shri VK Jain, learned Senior Counsel assisted by Shri Abhishek Tugnawat, learned counsel for the petitioners. Shri Vivek Dalal, learned Additional Advocate General for the respondents/State.
Law laid down	A) <u>Article 243Q of the Constitution of India and Section 5 of M.P. Municipalities Act, 1961</u> - The decision whether an area can be treated as a “transitional area” must be based on following parameters:- (i) Population of the area (ii) Density of population therein (iii) Revenue generated for local administration (iv) Percentage of employment in non-agricultural activities, (v) Economic importance, and (vi) Such other factors as Governor of the State may deem fit. B) <u>The gazette Notification dated</u>

	<p>27/11/2011 – By this Notification the government has laid down the general parameters on the basis of which a decision can be taken to declare an area as “transitional area”. Thus, this is a general notification laying down the parameter/criteria for the said purpose.</p> <p>C) <u>Article 243Q(2) of Constitution and Section 5 of M.P. Municipalities Act, 1961</u> – The Notification issued for the purpose must be “area specific”. The basic parameters laid down in the said notification must be made applicable in relation to a particular area. The Notification must reflect the same.</p> <p>D) <u>Section 5 & 6 of M.P. Municipalities Act, 1961</u> – A combined reading of these provisions makes it clear that the Notification issued under Article 243Q and Section 5 of Municipalities Act must be relating to a 'particular transitional area' and, therefore, this Notification is directed to be related to that 'particular area' and was required to be circulated through newspapers which have circulation in the 'particular area'.</p> <p>E) <u>Rule of Law and Discretion</u> – The Notification issued under Article 243Q and Section 5 of Municipalities Act must be based on principles and parameters laid down in the said provisions. It cannot be based on unfettered discretion. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of Law.</p>
Significant paragraph numbers	11, 13, 15, 18, 25 .

ORDER**(Passed on this 23rd day of March, 2021)****Per: Sujoy Paul, J. :**

In these batch of petitions filed under Article 226 of the Constitution, challenge is made to similar Notifications dated

04/10/2018 (Annexure P/3), 29/09/2018 (Annexure P/4) & 02/07/2020 (Annexure P/1) issued by Urban Development and Housing Department in exercise of power under Section 5(1)(B) of Madhya Pradesh Municipalities Act, 1961 (37 of 1961) (in short Municipalities Act), whereby Govt. included the areas of certain village panchayats as Municipal Council.

2) This Court by common order dated 21/10/2020 had set aside the impugned Notifications by reserving liberty to the State to follow the “due process” and proceed afresh.

3) Review Petitions No.51 & 52 of 2021 were filed by the State seeking review of said common order dated 21/10/2020. The singular ground taken in the review petition was that a gazette Notification dated 27/11/2011 was filed by the State in aforesaid writ petitions but while passing the final order, the said Notification has not been taken into account. If Notification would have been taken into account, the fate of the matters would have been different. Since a relevant Notification which has a bearing on the issues involved has been left out, the matter may be reviewed. The review petitions were entertained and order dated 21/10/2020 was reviewed and recalled. The writ petitions were directed to be restored to their original numbers. In turn, these matters again came up for consideration before us.

4) Facts are taken from WP No.16904/2020. The petitioners are Sarpanch of different panchayats. From newspapers, they came to

know that Nagar Parishad (Municipal Council) is decided to be formed in Tehsil-Kukshi, District-Dhar. The petitioners promptly sent their representations against the formation of Nagar Parishad which are cumulatively marked as Annexure P/1. Since Petitioners' representations went in vain, they filed present petition contending that impugned Notification dated 04/10/2018 is not passed as per constitutional requirement of Article 243(Q) of Constitution of India and Section 5 & 6 of Municipalities Act.

5) To bolster this submission, Shri VK Jain, learned Senior Counsel assisted by Shri Abhishek Tugnawat, learned counsel placed heavy reliance on Article 243Q and Section 5 & 6 of the Municipalities Act. It is submitted that :-

(i) no order for disestablishment of any village was ever passed under Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (Adhiniyam),

(ii) no Notification under Section 126 of Adhiniyam for disestablishment of any Gram Panchayat was ever issued,

(iii) no opportunity of filing objections or hearing was ever afforded to the residents of any village,

(iv) no consequential order was ever passed under the Adhiniyam,

(v) no Notification as required under Article 243-Q of the Constitution of India and Section 5(2) & (6) of Municipalities Act was ever issued,

(vi) the Notification dated 27/11/2011 by no stretch of imagination can be said to be a Notification in consonance with Article 243-Q and Section 5(2) of Municipalities Act because :-

(a) The said Notification does not fulfill the requirement of proviso to Article 243-Q of the Constitution and Section 5(2) of Municipalities Act.

(b) The said Notification does not mention the name of any village and other necessary details.

(c) By said Notification, no Gram Panchayat was disestablished.

(d) The Notification dated 27/11/2011 at the most can be treated to be a guideline for declaring any area as “transitional area” subject to fulfillment of other standards.

(e) “Transitional area” cannot be established unless Gram Panchayat is disestablished. A separate Notification for declaring the area as “transitional area” is required to be established. In absence of any declaration/Notification being issued either to disestablish any Gram Panchayat or to declare any area as “transitional area”, the petitioners got no opportunity of filing objection.

6) Shri VK Jain, learned Senior Counsel placed reliance on the order of this Court dated 16/03/2012 passed in WP No.910/2012 filed with the return and urged that this judgment does not approve the stand of the respondents. In the said case, there was a Notification declaring particular area as “transitional area”, while in the present case there exists no such Notification. Lastly, by placing reliance on the judgment of Supreme Court reported in **AIR 2018 SC 2352 (Champa Lal vs. State of Rajasthan & Ors.)**, the petitioners urged that the impugned Notification runs contrary to the principles laid down by Apex Court in the case of **Champalal** (supra). In support of the aforesaid contention, the petitioners have filed written synopsis.

7) Sounding a *contra* note, Shri Vivek Dalal, learned Additional

Advocate General for the State submits that a plain reading of Notification dated 27/11/2011 shows that it fulfills the constitutional and statutory requirement of Article 243Q and Section 5 & 6 of Municipalities Act. By placing reliance on the definition of “Gram Panchayat” and “village” mentioned in the Panchayat Act, learned AAG urged that argument regarding violation of Section 126 of Panchayat Act is misconceived and without any basis. The argument advanced by petitioners is regarding disestablishment of Gram Panchayat, whereas Section 126 deals with disestablishment of village. The constitutional and statutory requirement of Municipalities Act was taken care of while issuing Notification dated 27/11/2011. All necessary parameters were laid down in this Notification in consonance with the aforesaid requirement of law. The impugned Notifications were passed in furtherance of previous Notification dated 27/12/2011. Hence, no fault can be found in the impugned Notifications. It is pointed out that this Court in WP No.910/2012 has not interfered with the Notification. Hence, no interference is warranted in these batch of petitions.

8) No other point is pressed by learned counsel for the parties.

9) We have bestowed our anxious consideration on rival contentions and perused the record.

10) The pivotal question for determination is whether the Notification dated 27/11/2011 can be said to be a Notification which fulfills the requirement of Article 243Q of the Constitution and

Section 5(2) and Section 6 of the Municipalities Act.

11) Article 243Q of the Constitution and Section 5 of Municipalities Act are reproduced hereinunder in a tabular form.

Art. 243Q of the Constitution	Sec. 5 of Municipalities Act
<p>(1) There shall be constituted in every State,</p> <p>(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</p> <p>(b) a Municipal Council for a smaller urban area; and</p> <p>(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:</p> <p>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 industrial township</p> <p>(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</p>	<p>5. Constitution of Municipal Councils and Nagar Parishad -</p> <p>(1) There shall be constituted-</p> <p>(a) a Municipal Council for a smaller urban area; and</p> <p>(b) a Nagar Parishad for a transitional area, that is to say an area in transition from a rural area to an urban area.</p> <p>Provided that a Municipal Council or a Nagar Parishad, as the case may be, 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 or a group of such establishments in that area and such other factors as he may deem fit, by public notification specify to be an industrial township :</p> <p>Provided further that when an area is notified to be a transitional area, the Gram panchayat having jurisdiction over such area shall continue to function until a duly elected Nagar Panchayat is constituted under this Act.</p> <p>(2) In this section, 'a smaller urban area' or 'a transitional 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 Act.</p> <p>(3) Omitted.</p>

(Emphasis Supplied)

12) Section 6 of the Municipalities Act is also relevant for decision

of the matter which reads as under:-

“6. Procedure for publication of notifications.

Every notification under Section 5 [or Section 5-A] shall be published in the Official Gazette and in at least one Hindi newspaper having circulation in the area to which it relates and also by posting a copy thereof-

(a) in a conspicuous place in the office of the Collector;

(b) in a conspicuous place in the office of the Municipality, if any, affected by the notification; and

(c) in such conspicuous place in the area affected by the notification as the Collector may deem fit.”

(Emphasis Supplied)

13) The Gazette Notification dated 27/11/2011 reads as under:-

मध्यप्रदेश राज्य

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 584

भोपाल, मंगलवार, दिनांक 27 दिसम्बर 2011 – पौष 6, शक 1933

नगरीय प्रशासन एवं विकास विभाग

मंत्रालय, वल्लभ भवन, भोपाल

भोपाल दिनांक 27 दिसम्बर 2011

अधिसूचना क्र.64-एफ-1-19-2009-अट्टराह-3 मध्यप्रदेश नगरपालिका अधिनियम 1961 की धारा 5 में नगर परिषद् के लिए संक्रमणशील क्षेत्र तथा नगरपालिका के लिये लघुत्तर नगरीय क्षेत्र एवं मध्यप्रदेश नगर पालिका निगम अधिनियम 1956 की धारा 7 में नगर निगमों के लिए वृहत्तर नगरीय क्षेत्र के गठन का प्रावधान है,

2. राज्य सरकार द्वारा लिये गये निर्णय अनुसार नगर परिषद्/नगरपालिका/नगर निगम के गठन का मापदण्ड जनसंख्या के आधार पर निम्नानुसार निर्धारित किया जाता है :

नगर परिषद्	—	20,000 से अधिक 50,000 से कम जनसंख्या
नगरपालिका	—	50,000 से अधिक 3,00,000 से कम जनसंख्या
नगर पालिका निगम	—	3,00,000 से अधिक जनसंख्या

इसके अतिरिक्त संक्रमणशील क्षेत्र के गठन हेतु निम्न मापदण्डों की पूर्ति भी आवश्यक है: —

- जनसंख्या 20 हजार से कम न हो, इसमें से जनसंख्या का 60 प्रतिशत सघन जनसंख्या हो,
- प्रकरणाधीन निकाय में कृषि इतर गतिविधियां संचालित हो तथा इन गतिविधियों में 50 प्रतिशत जनसंख्या कार्यरत हो,
- परिवर्तित होने वाली निकाय का स्वयं का राजस्व कम से कम रुपये 10 लाख प्रतिवर्ष हो,
- प्रकरणाधीन निकाय में स्थित कुल भवनों में से 30 प्रतिशत भवन संपत्तिकर की परिधि में आते हो अर्थात् इनकी वार्षिक भाडा मूल्य 4800.00 रुपये से कम न हो,
- प्रकरणाधीन निकाय के पूरे क्षेत्र में जल प्रदाय किया जा रहा हो,

6. प्रकरणाधीन निकाय में लगने वाले बाजार, पशु बाजार, आस-पास की अन्य ग्राम पंचायतों की तुलना में अधिक राजस्व देने वाले हो,
7. ग्राम पंचायत का स्वयं का भवन होना चाहिए, जिसमें कम से कम 10 कर्मचारी बैठ सके और 15 पार्षद बैठक कर सके,
8. प्रकरणाधीन निकाय में कुल सड़कों की लम्बाई की 30 प्रतिशत सड़के/नालियां पक्की होना चाहिये,
9. विद्युत व्यवस्था के अन्तर्गत निकाय के अधिकतर क्षेत्र में विद्युत खम्भे स्थापित हो,

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार

एस.पी.एस. परिहार, प्रमुख सचिव

14) Article 243Q is part of Chapter IX-A of the Constitution which was inserted by Constitution (74th amendment) (Act 1992) w.e.f. 01/06/1993). This part deals with various facets of municipalities including its constitution, composition, reservation of seats, power/ authority and responsibility of municipality etc.

15) The parties are at loggerheads on the aspect whether Notification dated 27/11/2011 can be treated to be a Notification issued under Article 243Q of Constitution. A careful reading of Article 243Q(2) shows that following parameters are required to be taken into account while issuing the Notification:-

- (i) population of the area
- (ii) density of population therein
- (iii) revenue generated for local administration
- (iv) percentage of employment in non agricultural activities
- (v) economic importance
- (vi) such other factors as Governor of the State may deem fit.

The argument of State is that all these parameters were taken note of while issuing the Notification dated 27/11/2011 and hence,

impugned Notifications are in accordance with law.

16) Indisputably, the necessary parameters were taken note of while issuing the Notification dated 27/11/2011. Interestingly, in this Notification, the Government itself mentioned that certain laid down parameters are required to be fulfilled for the purpose of establishment of a “transitional area”. A microscopic reading of this notification dated 27/11/2011 makes it crystal clear that this is a general Notification whereby only parameters for establishment of a 'transitional area' have been laid down. It is not area specific. In other words, the State has made endeavour to reduce in writing the relevant parameters flowing from Article 243Q and Section 5 of Municipalities Act in order to ensure that whenever a “transitional area” is to be constituted, the necessary parameters laid down can be applied. In our opinion, this Notification dated 27/11/2011 is a general Notification whereby basic parameters have been laid down for establishing a 'transitional area'.

17) Whether this Notification fulfills the requirement of Article 243Q of the Constitution and whether on the strength of this Notification, the impugned Notifications can sustain judicial scrutiny is the core issue.

18) Sub Article 2 of Article 243Q talks about necessary parameters which have been certainly taken care of while issuing the Notification dated 27/11/2011. However, the language employed in Sub Article 2 shows that transitional area means 'such area' as the Government may

after considering the aforesaid parameters, 'specify' by public Notification for the purpose of this Act. Thus, the provision makes it obligatory that such Notification must be “area specific”.

19) Section 5 of Adhiniyam is almost verbatim reproduction of Article 243Q in the statute book of Municipalities Act except second proviso to Clause b of Sub-Section 1 of Section 5 of the Municipalities Act. This Court has taken note of this aspect while passing order in WP No.910/2012 decided on 16/03/2012.

20) Pertinently, Section 5, 5A of the Municipalities Act became part of statute book pursuant to an amendment incorporated w.e.f. 30/05/1994. On the same date, certain words were inserted in Section 6 of the Municipalities Act.

21) Section 5 of Municipalities Act deals with “constitution of Municipal Councils and Nagar Parishads”. As noticed, Sub-Section 2 of Section 5 is almost analogous to Article 243Q(2) of the Constitution. Section 6 prescribes the procedure for publication of Notification under Section 5 or Section 5A of the Municipalities Act. This provision, in no uncertain manner makes it clear that “every Notification” under Section 5 needs to be published in the official gazette and in hindi newspaper having circulation *in the area to which it relates*. A combined reading of Section 5(2) and Section 6 leaves no room for any doubt that the Notification issued under Sub-Section 5(2)/Article 243Q of the Constitution must be an area specific Notification.

22) The law makers, who have drafted Sub-Section 6, in our view were clear in their mind that every Notification issued under Section 5 must take care of necessary parameters mentioned herein-above and it must be issued and relate to the area for which it is issued. Thus, we find force in the argument of counsel for the petitioners that the Notification dated 27/11/2011 is a general Notification which only lays down the basic parameters for the purpose of constitution of a “transitional area”. The constitutional and statutory requirement is to issue specific Notification relating to a particular area by taking into account said parameters in the fact situation of the particular area.

23) In the case of *Champalal* (supra), the Apex Court opined as under:-

“8. It is declared under Article 243Q(2) that the expressions “a transitional area”, “a smaller urban area” and “a larger urban area” (hereinafter collectively referred to as “AREAS”) would mean such areas as may be specified by the Governor by a public notification for the purpose of Part IX A of the Constitution of India. Article 243Q(2) further obligates the Governor to have due regard to the various factors mentioned therein before specifying the AREAS i.e. population of the area, the density of the population, the revenue generated in the area for local administration, percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit.

9. It, therefore, appears from the scheme of Article 243Q(2) that the Governor is not free to notify ‘AREAS’ in his absolute discretion but is required to fix the parameters necessary to determine whether a particular AREA is a transitional area or a smaller urban area or a larger urban area with due regard to the factors mentioned above. It is implicit that such parameters must be uniform for the entire State. It is only after the determination of the parameters, various municipal bodies contemplated under Article 243Q(1) could be constituted.

(Emphasis supplied)

24) In this judgment, the Apex Court poignantly held that areas

would mean *such areas as may be specified*. Great emphasis is laid by Apex Court about requirement of specifying the 'area'. The parameters were required to be applied in relation to “particular area” as a transitional area or a small urban area or a large urban area. Hence, there is no cavil of doubt that the Notification dated 27/11/2011 cannot be said to be an area specific Notification which fulfills the requirement of law and on the strength of this Notification dated 27/11/2011 whereby only general parameters were laid down, the impugned Notifications cannot be given stamp of approval.

25) The decision of the government for constituting a “transitional area” cannot be based on unfettered discretion. Indeed, it must be guided by parameters laid down in Article 243Q of Constitution. If decision is taken without considering any principle and parameters, such a decision is antithesis of a decision taken in accordance with law. *Douglas J. in United States vs. Wunderlich (342 US 98 (1951))* opined that 'law has reached its finest moments when it has freed man from the unlimited discretion of some ruler.....where discretion is absolute, man has always suffered.' This observation of *Douglas J.* was quoted with profit by constitution Bench of Supreme Court in *2012 10 SCC Page 1 (Natural Resources Allocation, in reference, Special Reference No.1 of 2012)*. Similarly, it was held that Rule of Law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classical terms in *Wilkes (R. vs. Wilkes) 98 ER 327*. Since in the instant case, the impugned

Notifications are passed without testing the factual matrix of areas in question on the relevant parameters which were laid down in the Notification dated 27/11/2011, the impugned decision cannot be said to be taken based on relevant parameters.

26) This is trite that while interpreting a constitutional/statutory provision, due care must be taken to give meaning and interpretation to every word used and employed in the provision.

The Courts always presumed that the legislature inserted every part of statute for a purpose and the legislative intention is that every part of the statute should have effect. (See: *J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. State of U.P. (AIR 1961 SC 1170)*, *Shri Mohammad Alikhan vs. Commissioner of Wealth Tax (AIR 1997 SC 1165)*, *Dilwar Babu Kurane vs. State of Maharashtra (AIR 2002 SC 564)*, *Ramphal Kundu vs. Kamal Sharma (AIR 2004 SC 1039)*). This is equally settled that legislature is deemed not to waste its words or to say anything in vain. (See: *Quebec Railway, Light, Heat & Power Co. v. Vandry, (AIR 1920 PC 181)*, *Union of India vs. Hansoli Devi (AIR 2002 SC 3240)*). Patanjali Shastri, C.J.I. held that it is not a sound principle of construction “to brush aside words” in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Hill vs. Williams Hill (1949) 2 ALL ER 452 (HL)* referred to in *Bherulal Parakh vs. Mohadev Das Maya, AIR 1959 SC 781*, it was ruled that “the rule that a meaning should, if possible, be given to

every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if words are left out.” (*See also: AIR 1975 SC Page 43-Umed vs. Raj Singh*).

27) Section 6 mandates that Notification issued under Section 5 needs to be published in the gazette and in the Newspaper having circulation *in the area to which it relates*. A conjoint reading of Article 243Q(2) of Constitution and Section 5 & 6 of Municipalities Act leads us to the conclusion that the legislative intent behind said provisions was to apply aforesaid parameters in relation to a “particular transitional area” and issue Notification in relation to the said area and circulate it in the said area as per the procedure prescribed.

28) In view of foregoing analysis, the question framed must be answered against the State. In our view, the Notification dated 27/11/2011 was not area specific and said Notification cannot be a reason to sustain the impugned Notifications dated 04/10/2018, 29/09/2018 & 02/07/2020 challenged in these petitions. At the cost of repetition, in our view general notification dated 27/11/2011 does not fulfill the requirement of law. Admittedly, in the impugned notifications there exists no consideration of necessary parameters for declaring the areas as 'transitional areas'. In absence thereof, impugned notifications became vulnerable. Consequently, all the Notifications dated 04/10/2018, 29/09/2018 & 02/07/2020 are set aside. The respondents/State shall be at liberty to follow the “due

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process” and proceed afresh in the matter.

29) The writ petitions are disposed of.

30) A copy of this order shall be placed in the record of connected matters.

(SUJOY PAUL)
JUDGE

(SHAIENDRA SHUKLA)
JUDGE

soumya

