



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-11697-2023 (O&M)

Reserved on: 19.11.2024

Pronounced on: 03.12.2024

Gram Panchayat Kalanwali and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. B.S. Mittal, Advocate
for the petitioners.

Mr. P.P. Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein pray for the issuance of a writ of Certiorari for quashing the impugned notification dated 25.04.2023 (Annexure P-11), whereby respondent No.1 included the area(s) of village Kalanwali within the limits of Municipal Committee, District Sirsa, by purportedly ignoring the guidelines dated 03.03.2009 (Annexure P-12); Gram Panchayat's resolution dated 21.02.2023 (Annexure P-9); objections dated 22.02.2023 (Annexure P-10) filed by the residents against the draft notification dated 13.01.2023 (Annexure P-8).



Factual Background

2. Village Kalanwali is the largest village in District Sirsa and Municipal Committee, Kalanwali adjoins the said village and most of the people of the village are doing agricultural work.

3. Owing to some political considerations, some residents of Village Kalanwali, approached Sh. Krishan Kumar Bedi, Political Secretary to Chief Minister, Haryana, and requested that their area of village Kalanwali be included in the Municipal Committee, Kalanwali, whereupon Krishan Kumar Bedi, Political Secretary of Chief Minister proceeded to recommend the said request (Annexure P-1) to the authorities for takings of further action thereons.

4. In compliance of Annexure P-1, respondent No. 2 vide letter dated 9.8.2021 (Annexure P-2) sought a report from the Deputy Commissioner, Sirsa, thus therebys requesting the Deputy Commissioner, that according to the guidelines/criteria, given in the Govt. circular dated 53/278/2008-3K1 dated 03.03.2009 and Letter No.18/72/2018-K1 dated 17.04.2018 and Government Order Endst. No.3/278/2008-3K1 dated 22.01.2009, the Deputy Commissioner (supra) after constituting a committee, thus his sending the apposite report along with his recommendation regarding extending the limit of the Municipal Committee, Kalanwali.

5. In compliance of letter (Annexure P-2), Secretary, Municipal Committee, Kalanwali through a letter dated 2.9.2021 (Annexure P-3), thus further sought a detailed report from Block Development and Panchayat Officer, Odhan, thus with regard to the population as well as qua the details of lands of village Kalanwali.



6. When the Gram Panchayat and other residents of village came to know about the inclusion of area of Gram Panchayat Village Kalanwali into the area of the Municipal Committee, Kalanwali, and that too without constituting any committee, thereupon petitioner Nos. 2 to 5 as well as a large number of other residents of the village filed objections against the inclusion of village Kalanwali in the Municipal Committee, Mandi Kalanwali, and the said objections were sent through registered post dated 23.9.2021, to respondent No.1 as well as to respondent No.4 but no action was taken by the authorities concerned.

7. On 07.02.2022, respondent No.1 issued a notification by showing its intention to include the area of Village Kalanwali in the limit of Municipal Committee, Kalanwali and invited objections from the residents of the Village. The residents of the village had filed objections dated 22.02.2023 (Annexure P-10) before the Deputy Commissioner, Sirsa, against the inclusions of village area into the limits of Municipal Committee Kalanwali, contents whereof become extracted hereinafter.

“1. That within the municipality area of Kalanwali, which is already running, there is a lot of measles, marmalade, and illegal activities, which has not been resolved by the municipality, if now the agricultural land of Kalanwali village is included in the municipal area. If this is done then the people of the village will have to face a lot of problems.

2. That the people of Kalanwali village are dependent on agriculture and 90 percent of the people do agriculture, so the condition of municipality cannot apply to the village as the whole village is dependent on agriculture.

3. That the municipality will have to pay heavy tax due to increase in the limit of municipality. Due to which the economic condition of the villagers will be burdened because



most of the people of the village are poor and illiterate and live their lives by doing wages.

4. That the people of the village will be deprived of 5. Point due to the inclusion of the village in the municipality. Which will make it difficult for them to get a government job.

5. That this will end the MNREGA scheme of the village, due to which the employment of the common people of the village will end. Due to which they will have to die of starvation.

6. That the boundary area of the municipality has been increased, only the entire agricultural land has been included in it, due to which the area of agriculture has been affected.

7. That Panchayat Sarpanch and Panchayat members are elected in the village and they have the right to take decision in the interest of the village and their right will be lost if the area of the municipality increases.”

8. After receiving the supra objections, the respondents concerned, did not decide them, wherebys, the matter remained pending for months and thereafter, as per the information of the Gram Panchayat, the idea to include Village Kalanwali within the Municipal limits was dropped. Subsequently, vide notification dated 14.10.2022, (Annexure P-6) the State Election Commission, Haryana, issued the schedule for conducting General Elections of 9 districts including District Sirsa, in which village Kalanwali falls.

9. Thereafter, the election with regard to the Gram Panchayat Kalanwali were held as per schedule and the duly elected body of the Panchayat was elected in November, 2022 and election certificate was duly issued to the Sarpanch of Gram Panchayat Kalanwali by the Returning Officer vide order dated 12.11.2022 (Annexure P-7).

10. Subsequent to the elections of the Gram Panchayat Kalanwali, the respondent No.1 again issued the impugned notification



dated 13.01.2023 declaring its intention to include the village areas of Kalanwali within the limits of Municipal Committee, Kalanwali but without mentioning the status of the earlier notification dated 07.02.2022 (Annexure P-4).

11. On 21.02.2023, the petitioner Gram Panchayat called an emergency meeting of the Gram Panchayat and the Gram Panchayat passed a resolution No.61 dated 21.02.2023 (Annexure P-9) by mentioning that the Gram Panchayat was elected only on 12.11.2022 and the oath ceremony had taken place on 13.12.2022 and the tenure of the Panchayat is up to 02.02.2027, whereby owing to the extension of the Municipal Limit, thus including therein the village areas, thereby the tenure of the Panchayat will become shortened, whereby would ensue violation to the Constitutional mandate, thus envisaging that the duly elected term of the Gram Panchayat is to last for at least five years. The contents of the resolution (supra) become extracted hereinafter. The further echoings, as made in the hereinafter extracted resolution are almost paramateria to the objections (supra), as became preferred by the petitioners before the Deputy Commissioner, Sirsa, whereby they evinced their protest against the inclusion of Gram Sabha areas into the municipal limits of Municipal Committee, Kalanwali, besides portrayed therein certain objections which are additional to the ones, as become enclosed in Annexure P-10.

“Today, on 21/02/2023, the emergency meeting of Gram Panchayat Kalanwali was held under the chairmanship of Mr. Ajaib Singh Sarpanch at 2 pm in the Panchayat Ghar, in which the following actions were implemented. It is that in today's meeting, the Sarpanch in the emergency meeting of the Gram Panchayat issued by the Principal Secretary, Haryana Government, Urban Local Body, Chandigarh, regarding the expansion of the limits of



Municipality Kalanwali, vide notification number 09/03/2023-4 K II dated 13/01/2023 In which any person has to give any objection/suggestion for the extension of the municipal limits of Kalanwali, he can give it through Honorable Deputy Commissioner Sirsa till 23/02/2023.

In this regard, a map of the limits of the proposed municipal committee has been displayed on the notice board of the municipality, in which the newly elected Gram Panchayat Kalanwali's meeting area is displayed in the notice to be included in the municipality, in this regard, the Gram Panchayat should consider its suggestion/objection.

Gram Panchayat, after observing the map of border extension municipality Kalanwali, considered to register its following suggestions/objections:-

- 1. After the election of the newly elected Gram Panchayat on 12/11/2022, the term is from 13/12/2022 to 02/02/2027 from the swearing in ceremony. If by increasing the limit, the term of the Gram Panchayat will end before the limit of the constitution, which would violate the constitution. According to the constitution before increasing the border area, no election is conducted in the concerned area by imposing restrictions six months in advance, while such a thing did not happen in the village area of Kalanwali.*
- 2. The assembly area of Kalanwali Gram Panchayat is completely related to the rural periphery, whose living conditions are based on agriculture, animal husbandry, bee keeping, fish farming, livelihood of the people based on small means of livelihood. If it is included in the limit, then the livelihood of the rural people will be completely stopped, people will reach the brink of starvation. People suffering from starvation will move towards crime, intoxication and dacoits.*
- 3. Being a rural area, the MNREGA scheme being run by the government will stop the livelihood of the villagers in the village due to the increase in the city limits, due to which people will become unemployed. Like giving 100 days work in MNREGA etc.*
- 4. By including the area of Gram Panchayat in municipality, the people of rural areas will have to be deprived of the five marks given by the government as economically*



backward in government jobs. Because of which promising children in rural areas will be left behind from jobs.

5. *By including the assembly area of Gram Panchayat in municipality, the collector rates of agricultural land and residential houses of the village will increase. Because of which people will have to leave rural Kalanwali and migrate by selling land and houses. so that in grams the economic, social and political life of the residents will be disturbed.*

6. *Municipal property tax, water tax, urban tax, Visak charge etc. will be applicable if the assembly area of Gram Panchayat is included in the municipality, this will make the life of the poor people of the village difficult.*

7. *By including the meeting area of Gram Panchayat in the municipality, the work of the existing Gram Panchayat will end, due to which the small works which are done at the village level within hours and minutes, illiterate innocent people will keep running around to get the work done in the municipality. There will be delay in their work.*

On the above facts, the Gram Panchayat has unanimously decided that keeping in view the interests of the people, the meeting area of the Gram Panchayat should not be included in the limits of the municipality so that the villagers can get their work done easily at the Gram Panchayat level. And the duplicate proposal being made in the rural area was sent to the service of Honorable Deputy Commissioner Sirsa, requesting that the area of Gram Panchayat should not be included in Municipality Kalanwali.”

12. The respondents concerned, without deciding the objections raised by the villagers and by ignoring the resolution of the Panchayat, thus straightway issued the impugned notification dated 25.04.2023 (Annexure P-11), whereby the proposed village areas were declared to become included in the territorial domains of Municipal Committee, Kalanwali, District Sirsa.

Submissions of the learned counsel for the petitioners

13. The learned counsel for the petitioners submits, that since in the guidelines/criteria for including/exclusion of limits of any



Municipality, thus the State vide letter dated 3.3.2009, (Annexure P-12), thus thereins has mentioned that the apposite Committee would be constituted. However, since the said committee was not constituted. Consequently, it is argued that since therebys also the criteria spelt in Annexure P-12 relating to the inclusion of any Gram Sabha area onto the municipal limits, rather remained neither deliberated upon, nor any informed decision became recorded by the committee, which was to be so constituted. In sequel, it is further argued by the learned counsel for the petitioners, that the effect of the above, is that, the objections which are in tandem with the criteria spelt in Annexure P-12. Therefore, unless an opportunity of personal hearing became granted to the objectors by the Deputy Commissioner, Sirsa, whereas, the same remaining not assigned to the objectors, Resultantly wherebys despite may be an adverse effect becoming entailed upon the otherwise agrarian character of the Gram Sabha concerned, yet the respondent concerned, proceeding to but naturally in a most arbitrary, and, in an ill-informed manner, thus through bypassing the relevant criteria, rather proceeding to make the impugned notification but in an ill informed manner.

14. The learned counsel has further argued that through the notification dated 14.11.2003, the proposed areas falling within the territorial domain of village Kalanwali were excluded from theirs being included within the territorial domain of Municipal Committee, Kalanwali. Moreover, when the elections also became subsequently held, and, when within the Constitutional mandate, as encapsulated in Article 243E, provisions whereof become extracted hereinafter, thus the tenure of the said democratically elected body is to last upto five years.



243E. Duration of Panchayats, etc.

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved.”

15. Consequently, he submits, that the shortening and curtailing of the tenure of the democratically elected body after inclusion of the Gram Sabha areas into the territorial domain of Municipal Committee, Kalanwali but aggravates the arbitrariness, as became indulged into by the respondents concerned, in increasing the limits of the Municipal Committee through adding into the Gram Sabha areas of village Kalanwali. Therefore, he has argued, that unless there were immense changes since then till the issuance of the impugned notification dated



25.4.2023 (Annexure P-11), thereby the impugned notification was not required to be issued.

16. To fortify the said submission, he submits that since in the resolution of the Gram Panchayat (Annexure P-9), and, in the objections (Annexure P-10), there are most tangible resistences against the inclusion of the Gram Sabha areas into the areas falling within the jurisdiction of Municipal Committee, Kalanwali. In sequel, he argues, that the transition of the Gram Sabha areas of village Kalanwali onto the territorial limits of Municipal Committee, Kalanwali, is made in a slipshod, arbitrary and ill-informed manner, whereby reiteratedly but naturally, there has been a complete bypassing of the norms (supra), as encapsulated in Section 4 of the Haryana Municipal Act, 1973 (for short 'the Act of 1973'), relevant provisions whereof become extracted hereinafter. He submits, that such bypassings but become comprised to the extent that despite sub-Section 2 thereof encompassing the statutory coinages that "*the State Government shall take such objection into consideration*", whereby thus not only an opportunity of personal hearing was required to be granted to the objectors but also the said objections were required to be decided in terms of the criteria/guidelines, as contemplated in Annexure P-12. However, when the supra statutory coinages but with the supra statutory connotation remained unadhered to, thereby the issuance of the impugned notification by the respondents, thus causes a grave pervasive breach to the statutory coinages (supra).

"4. Notification of intention to alter limits of municipality-.

(1) The State Government may, by notification, and in such other manner as it may determine, declare its intention



to include within a municipality and local area in the vicinity of the same and defined in the notification.

(2) Any inhabitant of a municipality or local area in respect of which a notification has been published under sub-section (1), may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification; and the State Government shall take such objection into consideration.

(3) When six weeks from the publication of the notification have expired, and the State Government has considered the objections, if any, which have been submitted under sub-section(2), the State Government may, by notification, include the local area in the municipality.

(4) When any local area has been included in a municipality under sub-section (3), this Act, and, except as the State Government may by notification, direct otherwise, all notifications, rules, bye-laws, orders, directions and powers issued, made, or conferred under this Act and in force throughout whole of the municipality at the time, shall apply to such area.”

17. In other words, he further submits that it is mandatory on the part of Government to consider the objections filed by the petitioners to the proposed notification and to also pass an order on such objections rather before issuing the final notification, but in the present case neither any committee was constituted as per (Annexure P-12) nor the resolution of Panchayat against inclusion in the M.C. Limit was considered, nor even the objections filed by the petitioners were ever considered by the Government and nor any well reasoned order was passed thereons. The learned also argues, that it is also relevant to mention here that the requirement of the statute is that not only the objections are to be considered, but also when they are required to be dealt with, besides are further required to be either accepted or rejected



by, thus through passings of a speaking or reasoned order.

18. He further submits, that vide notification dated 14.11.2003, the proposed area of Village Kalanwali in the Municipal Committee of Kalanwali, thus was excluded on the demand of the villagers and thereafter there was no change in the size of the agricultural lands falling in village Kalanwali, wherebys there was no necessity at all to include the Gram Sabha areas into the municipal limits of village Kalanwali

Submissions of the learned State counsel

19. The learned State counsel submits that, the instant petition being devoid of any merits deserves to be dismissed. In support of his submission, the learned State counsel has placed reliance upon a judgment passed by a Division Bench of this Court in case bearing ***CWP No. 320 of 1998*** titled as ***M/s Sahni Carpets and others versus State of Haryana and others***, wherein, in a situation alike to the instant one, this Court while disagreeing with a judgment passed by the Apex Court in case titled as ***Baldev Singh and others versus State of Himachal Pradesh and others***, reported in ***AIR 1987, Supreme Court 1239***, and, while agreeing with a judgment rendered by the Apex Court in case titled as ***State of Punjab versus Tehal Singh*** reported in ***2002 AIR (SC) 533***, wherein, it has been expostulated that even when in sub-Section (2) of Section 4 of the Act of 1973, there are explicit statutory expressions, but only to the extent of the objectors submitting their objections in writing before the authority concerned. Moreover, since it has been also stated therein that yet any wants of any explicit expression therein, thus entailing an obligation upon the authority concerned, to grant an opportunity of personal hearing to the objectors,



therebys there was no requirement for adherence being made to the principles of natural justice by the authority concerned, nor any non adherence as made to the principles of *audi alteram partem*, thus vitiate the apposite notification.

20. Resultantly it was declared in the supra judgment made by the Division Bench of this Court in ***M/s Sahni Carpets'*** case (supra), that the lacks of explicit expressions in sub-Section (2) of Section 4 of the Act of 1973, to the extent, that there was a dire requirement of personal hearing being granted to the objector by the authority concerned, rather resultantly did not vitiate the relevant transitions, as made through the apposite notification, nor the non-granting of personal hearing to the objectors vis-a-vis their objections, thus also did vitiate the therein impugned notifications, which are purportedly similar to the instant impugned notification. The relevant paragraphs of the judgment (supra) passed by this Court become extracted hereinafter.

“10. Needless to assert, the powers exercised by the State Government under Section 4 of the Municipal Act is legislative in character and is exercised to discharge the legislative functions. This being so, we cannot persuade ourselves to accept the contention of the petitioners that affording of opportunity of hearing to the inhabitants was mandatory and in the absence thereof, the Notification under [Section 4 \(3\)](#) of the Municipal Act was not sustainable. We are supported, in our view and perspective, by a decision of the Hon'ble Supreme Court in [State of Punjab vs. Tehal Singh](#), 2002 AIR (SC) 533. The relevant paragraphs of the judgment are reproduced below:

"5. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, the rule of natural justice is required to be observed? It is almost settled law that an act legislative in character - primary or subordinate, is not subjected to rule of natural justice.



In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide for observance of principle of natural justice or provide for hearing to the resident of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabhaf for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded from one Gram Sabha and included it in different Gram Sabhas or a local authority. However, it depends upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principle of natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority. In [Rameshchandra Kachardas Porwal Ors. vs. State of Maharashtra](#) (supra), this court held as thus:

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the yard at one place and establishing it elsewhere was therefore, bad. It was objections before a "market area" was declared under CWP-320-1998 -6- the Act, so should objection be invited and heard before a 'market yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of the function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice."



In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included it in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declarations either under Section 3 and 4 of the Act by the Government.”

Inference(s) of this Court

21. The first question of law which arises for determination is whether the decision taken by the Apex Court in **Baldev Singh**'s case (supra), covers a subject matter, thus similar to the subject matter at hand, wherebys alone the decision rendered in the verdict (supra) would acquire the fullest effectivity vis-a-vis the subject at hand.

22. The second question which arises for determination is whether the subject matter detailed in the decision rendered by this Court in **M/s Sahni Carpets case** (supra), is also similar to the subject matter at hand wherebys, this Court may proceed to accept the decision recorded by the Division Bench of this Court in case (supra), especially when the decision (supra) becomes banked upon the decisions rendered by the Apex Court in **Tehal Singh's case** (supra) and in case titled as **Rameshchandra Kachardas Porwal others versus State of Maharashtra and others** reported in **(1981) 2 SCC 722**. Therefore, if



the subject matters therein are analogous to the subject matter at hand, thus thereby the said decisions but are also required to be applied to the instant factual matrix.

23. The third question of law appertains to whether the *ratio decidendi* propounded in the decision recorded by this Court in ***M/s Sahni Carpets***' case (supra) rather is well founded upon the decision rendered by the Apex Court in ***Tehal Singh***'s case (supra) and in ***Rameshchandra Kachardas Porwal***'s case (supra). In other words, if the ratio decidendi propounded by the Division Bench of this Court in ***M/s Sahni Carpets case*** (supra) becomes well rested on the decision recorded by this Court in ***Tehal Singh***'s case (supra) and in ***Rameshchandra Kachardas Porwal***'s case (supra), thereby the said decisions would be reversed.

24. However, only when an incisive reading of the facts in the verdicts (supra) rendered by the Apex Court in cases (supra) do unfold, that the subject matters therein are evidently not contradictory to the subject matter at hand. Further whether if the foundational strata of the ratio decidendi propounded by the Division Bench of this Court in ***M/s Sahni Carpets***' case (supra), as becomes aniled upon the supra verdicts, thus becomes destabilized, whether thereby, this Court can be led to disconcur with the ratio decidendi (supra) propounded by the Division Bench of this Court. Contrarily, whether this Court is to become inclined to accept the ratio decidendi, as becomes propounded in a judgment rendered by the Apex Court in ***Baldev Singh***'s case (supra), but only subject to the principles therein being so settled on a factual matrix, thus congruous to the factual matrix at hand.



25. For uncovering whether the judgment made by the Apex Court in **Baldev Singh's** case (supra) is applicable to the facts at hand, thereby it is necessary to initially deal with the facts detailed therein, and, to subsequently detail the facts set-forth in the instant case, rather for thereby, this Court after concluding qua, upon, being any inter se similarity or congruity of facts in both the cases, thereupon this Court may becoming further inclined to accept the ratio decidendi propounded in **Baldev Singh's** case (supra).

26. In the instant case, a challenge is made to the inclusion of the Gram Sabha areas within the limits of Municipal Committee, Kalanwali. The said inclusion was made in terms of a notification issued under Section 4 of the Act of 1973.

27. The fact in **Baldev Singh's** case (supra) are somewhat similar to the facts at hand, to the extent, that certain Gram Sabha areas, in the State of Himachal Pradesh were notified to become a part of the municipal area(s). The said was done in terms of Section 256 of the Himachal Pradesh Municipal Act, 1968. The arguments raised therein by the counsel for the aggrieved from the therein impugned notification, becomes alluded to in paragraph 4 of the verdict (supra), para whereof becomes extracted hereinafter.

“4. Appellants counsel has raised a more serious issue namely denial of an opportunity of being heard before the notified areas has been constituted. Since [Section 256](#) of the Act requires certain aspects to be satisfied before a notified area can be constituted, factual determination had to be made as to whether those statutory conditions were satisfied Ours is a democratic polity. At every level, from the villages up to the national level; democratic institution have been introduced The villages are under Gram Panchayats, urban areas under Municipalities and Corporations, districts are



under Parishads for the State the is a Legislature and for the entire country, we have the Parliament People residing within Gram Panchayats have their electoral rights to exercise and in exercise of such rights, they have elected their representatives. 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 incidences of tax and the like.

28. Ultimately, in paragraph 5 of the verdict (supra), para whereof becomes extracted hereinafter, it has been expostulated that where some administrative action becomes drawn in terms of the relevant statute, inasmuch as, when there are extensions of municipal areas, through inclusion therein of Gram Sabha areas, therebys when but naturally the said inclusions may possibly entail adverse consequences, upon the residents of the erstwhile Gram Sabha areas. Resultantly, it was stated that even if the statute does not expressly require, that the principles of natural justice are to be adhered to, in the relevant decision making process, yet adherence is required to be made to the principles of natural justice, but subject to the limitations, that in case the statute specifically rules out the application of principles of natural justice, thereupon alone there is no requirement of adherence being made to the principles of natural justice by the administrative authorities, upon, theirs proceeding to consider the objections raised by the objectors, otherwise not.



“5. Reliance was placed on two decisions of this Court in support of the appellants' stand that natural justice required an opportunity of being heard to be extended to the people of the area before the administrative decision to constitute the notified area was taken. The first is the case of **S.L. Kapoor versus Jagmohan 1980 (4) SCC 379 : 1986 R.R.R 341**. That was a case where the committee constituted under the **Municipal Act** was superseded. This Court held that where the administrative action entails civil consequences, observance of natural justice would be warranted and unless the law excludes the application of natural justice it should be taken as implanted into the scheme. The other is the case of **State of Orissa v Sridhar Kumar Mallik, (1985) 3 SCC 697 : 1986 RRR 388**, where the validity of the action taken under **Section 417-A** of the Orissa Municipal Act in constituting a notified area was being examined. The Court, referring to the statutory scheme, found :

The extension of the Orissa Municipality Act to an area other than a municipality is a matter of serious moment to the residents of the area. It results in the provision of amenities and conveniences necessary to civil life and their regulation by a local body. But the Act also provides for the imposition of taxes of different kinds on the residents. The tax structure does not embody an integrated unified impost expressed in a single tax measure. Different kinds of taxes are contemplated by the Act. The scheme set forth in Chapter XXX-A of the Act intends that before the Government extends the operation of the Act to an area under a municipality it must afford an opportunity to the local residents to object to the proposed action. The objections are submitted to the District Magistrate, who forwards them along with his views to the State Government. The State Government must take into consideration all the material before it and decide thereafter what should be the precise area to which the Act should be extended, and indeed whether all the provisions of the Act or only certain specified provisions should be so extended. The possibility of some



only of the provisions of the Act being applied to the notified area is evident from the terms in which the grant of power has been conferred on the State Government. Sub-section (1) of Section 417-A specifically envisages that when issuing the notification contemplated therein the State Government must decide whether administrative provision needs to be made "for all or any of the purposes" of the Act in the area proposed to be notified. Unless the proposal formulated in the proclamation made under Sub-section (1-a) of Section 417-A is precise and clear, and indicates with sufficient accuracy the area intended to be notified, and further indicates whether the administrative provision is proposed for all the purposes of the Act or only some of them, and if only some of them then which of them, it will not be possible for the residents to properly avail of the right conferred on them by the statute to make their objections to the proposal of the State Government. We do not see how it can be otherwise....

It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. We accept the submission on behalf of the appellants that before the notified area was constituted in terms of [Section 256](#) of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the views of the residents. Denial of such opportunity is not in consonance with the scheme of the Rule of law governing our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way."

29. Insofar as the instant notification is concerned, though it is issued in terms of Section 4 of the Act of 1973. However, when sub-



Section (2) of Section 4 of the Act of 1973, requires that when any Gram Sabha area is to be included within the municipal limits, therebys there is a requirement that the aggrieved therefroms, be permitted to raise objections in writing before the Deputy Commissioner concerned, but within six weeks from the date of publication of the notification. However, it is stated therein that “the State Government shall take such objection into consideration.”

30. Now, in the judgment rendered by this Court in *M/s Sahni Carpets*’ case (supra), this Court in para 10 thereof, while relying upon the judgment made by the Apex Court in *Tehal Singh*’s case (supra), thus has declared that the apposite statutory expression(s) “the State Government shall take such objection into consideration” does not entail, a *sine qua non* obligation upon the Deputy Commissioner, to assign a reasonable opportunity of personal hearing to the objectors. The said reason became founded upon the factum, that only if the legislature has provided for the assignings of an opportunity of personal hearing to the objector(s), thereupon alone or with the occurrence of such an explicit expression in the statute, therebys alone the objector(s) is required to be personally heard. Contrarily when the statute envisages that the mere filing of the objections by the objector before the Deputy Commissioner concerned, thus satisfy the purpose of expression(s) “*the State Government shall take such objection into consideration*” and/or the mere filing of the objections, thus tantamounts qua theirs being taken into consideration, thus irrespective of no opportunity of personal hearing being granted, besides no well informed decision being taken by the administrative authority. Nonetheless, therebys the respective objections are deemed to be considered rather even without an



opportunity of personal hearing being granted to the objectors.

31. Now, if reliance was well placeable by the Division Bench of this Court in *M/s Sahni Carpets'* case (supra), rather upon the judgment rendered by the Apex Court in *Tehal Singh's* case (supra), thereupon there was an imperative requirement that the facts detailed in *Tehal Singh's* case (supra) thus were evidently paramateria to the facts detailed in the judgment passed by the Division Bench of this Court in *M/s Sahni Carpets'* case (supra).

32. Now, for uncovering the respective commonality(ies) or the inter se distinctivity(ies) inter se the facts of the supra cases with the facts at hand, leads this Court to make a keen discernment of the facts detailed in *Tehal Singh's* case (supra), whereupon it becomes unraveled that thereins, a law was passed to the extent that there was no necessity of any opportunity of personal hearing being granted to the residents, upon, there emerging a proposal to include certain areas of one Gram Sabha onto the territories of another adjoining thereto Gram Sabha. As such, therebys the agrarian character of the Sabha areas remained intact, nor also thereys there were any transitions of Gram Sabha areas onto the municipal areas, nor therebys there could be any possible entailment of any adverse civil consequence, upon, the said transfers taking place. Significantly also when the affairs of the Gram Sabha are taken care of by the same democratically elected body, besides the laws applicable to the Gram Sabha areas are similar. The above is the striking pivotal factual matrix encapsulated in *Tehal Singh's* case (supra), which led to the making of declaration (supra) to the extent, that when such a proposal emanates, from the Government rather for including some Gram Sabha area, onto the areas of an adjoining thereto Gram Sabha,



thereupon there is no necessity of a personal hearing becoming granted to the objector(s). Therefore, the said striking fact is but dissimilar to the facts at hand, inasmuch as, in the instant case through the impugned amendment(s), there occurs a transition of erstwhile Gram Sabha areas onto the municipal limits. If so, in case there occurs transfer(s) of the Gram Sabha areas onto the municipal territories, thereby there would be a possible change in the agrarian character of the erstwhile rural landscape, which may also prima facie possibly result in entailment of adverse civil consequences, upon, the residents of erstwhile Gram Sabha areas, thus on their land(s) becoming transited to municipal areas.

33. It is on the touchstone of the supra inter se distinctivity inter se the facts at hand with the facts in *Tehal Singh's* case (supra), that this Court concludes that the placings of reliance by the Division Bench of this Court, upon, *Tehal Singh's* case (supra) rather was completely inapt. In the supra verdict i.e. in *M/s Sahni Carpets'* case (supra), to the expressions occurring therein, that "the State Government shall take such objection into consideration", rather a meaning becomes imparted, that since thereby there is no explicit privilege endowed upon the objector to receive a personal hearing from the Deputy Commissioner, whereas, there was an imperative requirement of explicit statutory expression(s) occurring therein, appertaining to the granting of a personal hearing to the objector(s). Resultantly thereby it was concluded that the mere "consideration of the objections by the State Government", but irrespective of any well informed decision being made or not being made thereons, but was sufficient to empower the Government to issue the notification, despite the objections being filed,



and, despite no opportunity of personal hearing being granted to the objector(s), as has happened in the instant case.

34. In consequence, with the supra apposite inter se contra distinctivity, especially when the supra ratio decidendi propounded in ***Tehal Singh***'s case (supra) rather becoming settled, thus on the supra factual matrix but dissimilar to the factual matrix in the instant case. Therefore, the ratio decidendi (supra), as made in ***Tehal Singh***'s case (Supra), and, which became relied upon by this Court while passing a judgment in ***M/s Sahni Carpets***' case (supra), rather makes this Court, to refrain to concur with the therein propounded ratio decidendi. The reason is but obvious, inasmuch as, the therein ratio decidendi (supra) was applicable to the facts at hand, but only when there was an evident similarity of facts therein, thus with the facts enunciated in the instant petition. However, as stated (supra), when there is an inter se striking apposite factual distinctivity, therebys the ratio decidendi propounded in ***Tehal Singh***'s case (supra), and, which became accepted by the Division Bench of this Court, while making a judgment in ***M/s Sahni Carpets***' case (supra), rather obviously made it inapplicable to the facts at hand. Conspicuously also when the propounded therein ratio decidendi became so settled on a factual strata, but contra-distinct to the factual strata in the instant case, as such, the ratio decidendi propounded therein, thus is disconcurred with by this Court.

35. Now the other judgment relied upon by the Division Bench of this Court also while making the supra ratio decidendi, was the judgment made by the Apex Court in ***Rameshchandra Kachardas Porwal***'s case (supra). However, even the facts therein are completely contra-distinct to the facts at hand, wherebys the ratio decidendi



propounded therein, applies only thus to the change of the site of the market yard, contemplated thus through a law enacted by the legislature whereafter the Administrative authority rather is not obligated to make any adherence to the principles of natural justice.

36. The reason for the supra therein propounded ratio decidendi being inapplicable to the facts at hand, ensues from the said ratio decidendi being made on a supra factual matrix, rather not common at all to the instant factual matrix, inasmuch as, the instant factual matrix appertains to the transition of Gram Sabha areas into the municipal limits, wherebys there are prima facie possibilities of adverse consequences becoming visited upon the residents of the village areas. Moreover, also when for making a profound decision, about the necessity of such transitions taking place, thus a complete machinery has been set-up, as embodied in Annexure P-12, in consonance wherewith resolution (Annexure P-9) became passed by the Gram Sabha, and, objections (Annexure P-10) also became raised by the objectors. Strikingly also, the facts therein relate to the creation of a market yard in a municipal area, therebys there was no transfer or transition of erstwhile Gram Sabha areas onto the territories of municipal area. Contrarily when in the instant case, through the making of the impugned notification, the transition of erstwhile Gram Sabha onto the municipal areas, rather has occurred, besides when naturally therebys prima facie adverse civil consequences may possibly become entailed upon the residents of the Gram Sabha areas, as such, it appears that ratio decidendi stated therein is inapplicable to the facts at hand. The reason being that the ratio decidendi propounded in a particular case settles the law only insofar as the facts therein are concerned, but



when there is factual contra-distinctivity inter se two cases, thereupon the appositely propounded ratio decidendi rather also is not applicable to those facts, which are dissimilar to the facts of the lis, wherein, such a *ratio decidendi* is propounded. Therefore, when the facts therein are dissimilar to the facts at hand, thereby the *ratio decidendi* stated therein is inapplicable to the facts at hand, nor the judgment made by the Apex Court in case (supra) was to be relied upon, as inaptly done by the Division Bench of this Court.

37. Be that as it may, since this Court accepts the ratio decidendi propounded by the Apex Court in case titled as **Baldev Singh's** case (supra), wherein for reasons (supra), the supra underlined expostulations of law are established, whereby unless a personal hearing becomes granted to the objector(s) which however has not been done, resultantly thereby the impugned notification become discountenanced by this Court.

38. Since ex facie no opportunity of personal hearing became granted to the objector(s), despite there being possible prima facie adverse consequences becoming visited upon the residents of the erstwhile Gram Sabha areas, on their lands transiting onto the municipal limits. Moreover when the unnecessary of such transitions taking place become acquiesced by the respondents, through their withdrawing the earlier notification, whereafter fresh elections were held, besides when from hereafter, rather the respondents have also acquiesced to the necessity of granting of personal hearing, to the objector(s) (a) from the respondent creating guidelines/criteria in Annexure P-12, (b) from the resolution passed by the Gram Panchayat and from the objections, (c) thus wherefrom prima facie the criteria spelt in Annexure P-12, do



possibly become applicable qua retention of the Gram Sabha areas within the Gram Panchayat concerned (d) from the contemplated committee remaining unconstituted. Nonetheless yet the objectors rather not being granted any personal hearing, besides no reasoned decision becoming recorded thereons. Therefore, the effect of the above omissions, is that not only a slipshod, but also an ill-informed decision became made by the respondent concerned, through the issuance of the impugned notification, whereby there has been inclusion of Gram Sabha areas onto the municipal limits. Thereafter reiteratedly when on supra premises, thus when the respondents acquiesce to, irrespective of the decision made by the Division Bench of this Court in *M/s Sahni Carpets*' case (supra), qua rather the meaning to be imparted to the statutory coinages that "*the State Government shall take such objection into consideration*", was none other than that the objectors were required to be personally heard, and, also a well reasoned decision was to be made on their objections. Significantly, since the above has not been done, thereupon the impugned notification is also ultra-vires the provisions of sub-Section 2 of Section 4 of the Act of 1973.

Final Order of this Court.

39. In aftermath, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed. The impugned notification is quashed and set aside, but with liberty to the respondents to re-issue the notification but only after complete adherence being made to the criteria/guidelines spelt in Annexure P-12, besides only after a detailed and well reasoned decision being recorded by the competent authority but only when prior thereto a



complete opportunity of personal hearing becomes granted to the objector(s) concerned.

40. The said exercise be completed within four months from today.

41. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

December 3rd, 2024
Ithlesh/Gurpreet

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No