

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19474 of 2023**

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DAYAL GRAM PANCHAYAT THROUGH SARPANCH RAMESHBHAI
DHULABHAI DAMOR
Versus
STATE OF GUJARAT

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Appearance:

MR MIHIR H JOSHI, SENIOR ADVOCATE WITH MR DIPEN DESAI(2481)
for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9
MR PRAKASH K JANI, SENIOR ADVOCATE WITH MR PRAVIN PANCHAL
for the Respondent(s) No. 3
MS MANISHA L SHAH, SENIOR ADVOCATE WITH MR MEET THAKKAR,
AGP for the Respondent(s) Nos.1 and 2.

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 06/11/2023

ORAL ORDER

Mr Mihir H. Joshi, learned Senior Advocate with Mr Dipan Desai, learned advocate for the petitioners submitted that a notification dated 17.10.2023 has been issued by the State Government in exercise of powers conferred under clause (d) of Article 243P and clause (2) of Article 243Q of the Constitution of India specifying the areas as smaller urban areas. In the earlier round of litigation, writ petition was filed, challenging similar such notification and this Court, was kind enough to direct the respondent not to implement the same; however, the writ petition, came to be dismissed and the appeal against the said judgment, came to be allowed by the Division Bench by quashing and setting aside the notification dated 13.08.2015. It is submitted that in the contempt proceedings, that the impugned notification was placed on record and that is how, the captioned writ petition.

2. It is submitted that the notification, only specifies the areas as

shown in the schedule annexed thereto as the smaller urban areas; also, the areas as the municipal areas of the Godhra Municipality. It is submitted that Article 243P of the Constitution of India contains definition clause. Clause (d) of Article 243P, defines the municipal area to mean the territorial area of a Municipality as notified by the Governor. Clause (2) of Article 243Q, *inter alia*, enumerates that a smaller 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.

3. It is submitted that while issuing the notification, the Governor shall consider the factors enumerated in clause (2) of Article 243Q; however, nothing is discernible that these factors have been considered while issuing the notification dated 17.10.2023. It is submitted that clause (ii) of the said notification also provides for notification of the areas as the municipal areas of the Godhra Municipality. Therefore, as a consequence to the said notification, the existing gram panchayats, having been merged in the municipal area, i.e. Godhra Municipality, the petitioners would be losing their representation. It is therefore, urged that the interim protection may be extended to the petitioners.

4. Ms Manisha L. Shah, learned Government Pleader with Mr Meet Thakkar, learned Assistant Government Pleader for the respondent nos.1 and 2 submitted that issuance of the notification under the provisions of clause (2) of Article 243Q of the Constitution of India, is the legislative act and therefore, once the notification

has been issued, the said notification, shall come into force at once. Requirements contained in clause (2) of Article 243Q of the Constitution of India, has been considered threadbare, and it is only thereafter, that the notification has been issued.

5. Reliance is placed on the judgment of this Court in the case of *Karodiya Village Panchayat vs. State of Gujarat* reported in 2021 (0) AIJEL-HC 242824. It is submitted that this Court, has considered various judgments wherein, it has been, *inter alia*, held that where provisions of a statute provide for legislative activity, i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that a certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into action forthwith which provide for certain consequences. It is therefore, submitted that when the notification has been issued by the Governor in exercise of the powers conferred under clause (2) of Article 243Q of the Constitution of India, it being a legislative act, the same may not be stayed. It is urged that the government, shall file their reply, indicating the steps taken while issuing the notification.

6. Mr Prakash K. Jani, learned Senior Advocate with Mr Pravin Panchal, learned advocate for the respondent no.3 submitted that the notification, is issued under the provisions of clause (2) of Article 243Q of the Constitution of India, the notification, shall come into force at once. Further, consequences are set out as per the provisions of Section 266B of the Gujarat Municipalities Act, 1963 (herein after referred to as 'the Act of 1993') which provides for the effect of conversion of gram panchayat into municipality. It provides

that when an area comprised in a gram is specified, *inter alia*, as a smaller urban area under clause (2) of Article 243Q of the Constitution of India, then with effect from the date so specified, the consequences shall ensue, namely, *inter alia*, that the panchayat functioning in the local area shall stand dissolved and the Sarpanch and the Upasarpanch and all members of such panchayat shall vacate their offices. Upon issuance of the notification, the consequences flowing from the provisions of Section 266B of the Act of 1993, shall take place and therefore, the notification, need not be stayed at this stage. So far as the aspect of losing of representation is concerned, the same is taken care of by the provisions of Section 266 of the Act of 1993 which, provides for a democratic situation.

7. Considered the submissions. Issue notice to the respondents, returnable on 30.11.2023. Mr Meet Thakkar, learned Assistant Government Pleader waives service of notice on behalf of respondent nos.1 and 2 and Mr Pravin Panchal, learned advocate waives service of notice on behalf of respondent no.3.

8. In the meantime, let the State Government, so also the respondent no.3, file their respective replies on or before 20.11.2023, with an advance copy to the learned advocate for the petitioners. Rejoinder, if any, be filed by 27.11.2023.

9. List the matter for final disposal on 30.11.2023.

BINOY B PILLAI

(SANGEETA K. VISHEN,J)