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KAMAL JORA

v.

STATE OF UTTARAKHAND & ANR.
(Civil Appeal No. 4835 of 2013)

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JULY 01, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

Municipality:

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Uttar Pradesh Municipal Corporations Act, 1959 - ss.3(2) and 8-AA - Dissolution of Municipal Council for its upgradation to Municipal Corporation - Without giving opportunity of hearing to the Municipal Council - After direction of the Court, State invited objections for the same

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by Public Notice - Municipal Council dissolved - Dissolution challenged by the Chairman of the Council on the ground that before dissolution, opportunity of hearing not given to the Municipal Council - Held: Dissolution of the Council was not

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without hearing the Council as several Municipal Councilors were heard before the dissolution - Constitution of India, 1950 - Article 243Q.

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The State Government by a Notification dissolved the Municipal Council, in exercise of powers u/s. 3(2) of Uttar Pradesh Municipal Corporations Act, 1959 as applicable to the State of Uttarakhand r/w. Art.243Q(2) of the Constitution and s. 8AA of the Act. When the Notification was challenged by the appellant on the ground that opportunity of hearing was not given to the Municipal

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Council before its dissolution, the Court held that opportunity of hearing should have been given and quashed the Notification. Thereafter, the State issued public notice inviting objection to conversion of the

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Municipal Council to Municipal Corporation. Date of hearing was also fixed and several Municipal Councilors were heard. Subsequently, the State issued two Notifications and declared conversion of the Municipal Council to Municipal Corporation and dissolution of the Municipal Council. The appellant again challenged the two Notifications, by filing writ petition, contending that no hearing was granted to the Municipal Council before its dissolution. Single Judge of High Court quashed the two Notifications. Appeal against the same was allowed by the Division Bench of High Court holding that opportunity of hearing was given to all the persons.

In appeal to this Court, the appellant contended that though objections were invited through public notice, but no hearing was given to the Municipal Council and yet the Municipal Council was dissolved.

The State contended that dissolution of Municipal Council for upgradation to Municipal Corporation cannot be termed as dissolution as envisaged under Article 243U of the Constitution and the proviso to Article 243U is not violated, if no opportunity of hearing is given before such dissolution.

Dismissing the appeal, the Court

HELD: 1. The earlier judgment of the Division Bench of the High Court holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, though not binding on this Court is binding on the parties because of the principle of res judicata. The State Government being the appellant in the aforesaid Special Appeal, cannot now contend that a hearing was not required to be granted to the Municipal Council, before it issued the two

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A notifications dissolving the Municipality and appointing an Administrator. [Para 11] [49-B-D]

B 2. However, the State Government had provided an opportunity of hearing to the objectors on their respective objections and amongst the objectors there were several Municipal Councilors. Hence, the appellant, who was the Chairman of the Municipal Council, could have also participated in the hearing in support of his objections. Thus, there is no infirmity in the impugned judgment of the Division Bench of the High Court that an opportunity of hearing was actually given to all persons likely to be affected by the two notifications. [Para 12] [51-A-D]

D *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. (1978) 1 SCC 405: 1978 (2) SCR 272; S.L. Kapoor v. Jagmohan and Ors. (1980) 4 SCC 379: 1981 (1) SCR 746; Swadeshi Cotton Mills v. Union of India (1981) 1 SCC 664: 1981 (2) SCR 533; State of Maharashtra and Ors. v. Jalgaon Municipal Council and Ors. (2003) 9 SCC 731: 2003 (1) SCR 1112 - referred to.*

Case Law Reference:

F	1978 (2) SCR 272	referred to	Para 8
	1981 (1) SCR 746	referred to	Para 8
	1981 (2) SCR 533	referred to	Para 8
G	2003 (1) SCR 1112	referred to	Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4835 of 2013.

H From the Judgment and Order dated 21.12.2011 of the High Court of Uttarakhand at Nainital in SA No. 289 of 2011.

A administer the areas of Municipal Corporation, Haridwar under
Section 8-AA of the Act without affording any opportunity of
hearing or a show cause to the Municipal Council and hence
the notification dated 20.05.2011 was in clear violation of the
Constitution of India. By the order dated 09.06.2011, the
B learned Single Judge, therefore, allowed the writ petition and
quashed the notification dated 20.05.2011 and directed the
District Magistrate, Haridwar to handover the charge forthwith
to the elected representatives of the Haridwar Municipality.

C 4. Aggrieved, the State of Uttarakhand filed Special
Appeal No.104 of 2011 before the Division Bench of the High
Court contending that the upgradation of the Municipal Council,
Haridwar to Municipal Corporation, Haridwar, was done by the
State Government in accordance with the mandate in Article
D 243Q of the Constitution and the dissolution of the Municipal
Council, Haridwar was merely a consequence of such an
upgradation and hence no show cause or opportunity of hearing
was required to be given to the Municipal Council, Haridwar
before the dissolution and before appointment of an
E Administrator to administer the areas of the Municipal
Corporation, Haridwar. The Division Bench of the High Court
in its judgment dated 23.06.2011, however, held that Section
8-AA of the Act does not provide for automatic dissolution of
the Municipal Council on upgradation to a Municipal
F Corporation and since automatic dissolution of a Municipal
Council has not been provided in the law, an opportunity of
hearing should have been given to the persons likely to be
affected by dissolution of the Municipal Council. The Division
Bench of the High Court, therefore, upheld the order dated
G 23.06.2011 of the learned Single Judge and dismissed the
appeal but on the prayer of the learned Advocate General
stayed the operation of the order dated 23.06.2011 of the
learned Single Judge for a period of three weeks.

H 5. Soon after the judgment dated 23.06.2011 of the

Vijay Hansaria, Nagendra Singh, Vishwa Pal Singh for the Appellant. A

Dr. Abhishek Atrey, Brijesh Panchal, Aishverya Shandilya for the Respondents.

The Judgment of the Court was delivered by B

A.K. PATNAIK, J. 1. Leave granted.

2. This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 21.12.2011 of the Division Bench of the Uttarakhand High Court in Special Appeal No.289 of 2011. C

Facts of the case

3. The relevant facts very briefly are that the appellant was elected as the Chairman of the Municipal Council, Haridwar, in May, 2008. When he was functioning as the Chairman of the Municipal Council, Haridwar a notification was issued on 20.05.2011 by the Government of Uttarakhand notifying that the Governor of Uttarakhand in exercise of powers under Section 3(2) of the Uttar Pradesh Municipal Corporations Act, 1959 (for short 'the Act') as applicable in Uttarakhand read with Article 243Q(2) of the Constitution and Section 8-AA of the Act has dissolved the Municipal Council, Haridwar, and appointed the District Magistrate, Haridwar, as Administrator for administering the area of the Municipal Corporation, Haridwar. The appellant filed Writ Petition No.1031 of 2011 on 20.05.2011 in the High Court of Uttarakhand, challenging the aforesaid notification mainly on the ground that no opportunity of hearing was given to the Municipal Council, Haridwar before the notification was issued and the learned Single Judge of the High Court who heard the writ petition held in his order dated 09.06.2011 that the dissolution of the Municipal Council, Haridwar was done and the Administrator was appointed to D
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A 6. Aggrieved by these two notifications dated 21.07.2011,
the appellant again filed Writ Petition (C) No.1533 of 2011,
contending that no hearing was granted to the Municipal
Council, Haridwar before the Municipal Council was dissolved
and the Administrator was appointed for the larger urban area
B of the Municipal Corporation and hence the two notifications
were liable to be quashed. The learned Single Judge by his
order dated 15.12.2011 allowed the writ petition and quashed
the two notifications dated 21.07.2011. Aggrieved, the State
of Uttarakhand and the District Magistrate, Haridwar filed
C Special Appeal No.289 of 2011 before the Division Bench of
the High Court and the Division Bench of the High Court held
in the impugned judgment dated 21.12.2011 that an opportunity
of being heard was given to all persons who were interested
in the decision making process of the Municipal Council,
D Haridwar. By the impugned judgment, the Division Bench of the
High Court therefore allowed the appeal and set aside the order
of the learned Single Judge and dismissed the writ petition.
Aggrieved, the appellant has filed this appeal.

E **Contentions of the learned counsel for the parties:**

F 7. Mr. Vijay Hansaria, learned counsel appearing for the
appellant, submitted that under Article 243U(1) of the
Constitution and under Section 10-A of the U.P. Municipalities
Act, 1916, every Municipality has the right to continue for a
period of five years from the date of its first meeting unless
sooner dissolved under any law for the time being in force. He
submitted that the proviso to Article 243U(1) of the Constitution
says that a Municipality shall be given a reasonable opportunity
of being heard before its dissolution. He submitted that the
G learned Single Judge of the High Court in his judgment dated
09.06.2011 in Writ Petition No.1031 of 2011 and the Division
Bench of the High Court in its judgment dated 23.06.2011 in
Special Appeal No.103 of 2011, therefore, held that the
Municipal Council, Haridwar, was entitled to an opportunity of
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Division Bench of the High Court, the Government of Uttarakhand issued a public notice dated 29.06.2011 stating therein that in the opinion of the State Government, the small urban area of the Municipal Council, Haridwar needs to be converted into a larger urban area and consequently to Municipal Corporation, Haridwar. By the public notice dated 29.06.2011, the Chairman and the Councilors of Municipal Council, Haridwar and the entire public residing in the urban area of the Municipal Council, Haridwar were invited to give their objections and suggestions. The public notice dated 29.06.2011 also stated that on 13.07.2011, a hearing would be conducted by the Principal Secretary, Urban Department, Government of Uttarakhand between 1.30 p.m. to 4.00 p.m in which persons will be given an opportunity of personal hearing on their objections and suggestions and only thereafter the final decision will be taken by the State Government. By a corrigendum dated 08.07.2011 issued by the State Government, the date of hearing was altered to 16.07.2011. The appellant filed his objections before the Director of Urban Development in July, 2011 and also stated in his objection that he be given a personal hearing on his objections. Thereafter, on 21.07.2011, the Government of Uttarakhand issued two notifications. In one notification dated 21.07.2011, it was stated that the Governor was pleased to notify for overall development of Haridwar city the conversion of existing smaller urban area into a larger urban area in exercise of powers under Section 3(2) of the Act read with Article 243Q(2) of the Constitution and to further notify that the area included in the larger urban area would be the total of the area of Municipal Corporation, Haridwar. In the other notification dated 21.07.2011, it was stated that the Governor has directed under Section 8-AA(1) of the Act that the existing Municipal Council, Haridwar would stand dissolved from the date of issuance of the notification and the District Magistrate, Haridwar be appointed the Administrator for the administration of the larger urban area of the Municipal Corporation, Haridwar.

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- A of the Municipal Corporation for the larger urban area, "it is expedient" to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator.
- B He submitted that there is nothing in the notifications dated 21.07.2011 of the State Government to show that the State Government formed the opinion that it was expedient to dissolve the Municipal Council and to appoint the Administrator.

C 10. In reply, Dr. Abhishek Atrey, learned counsel appearing for the State of Uttarakhand, on the other hand, submitted, relying on the counter affidavit filed on behalf of respondents no. 1 and 2 as well as the order dated 19.07.2011 of the Government of Uttarakhand annexed to the counter affidavit as

D Annexure-C-I, that the Division Bench of the High Court has rightly held in the impugned judgment that a personal hearing was granted by the public notice dated 29.06.2011 to all concerned including the Municipal Council, Haridwar. He cited the decision of this Court in *State of Maharashtra & Ors. v. Jalgaon Municipal Council & Ors.* [(2003) 9 SCC 731] in which

E the notification dated 16.10.2001, as amended by the notification dated 15.11.2001, dissolving the Jalgaon Municipal Council was held to satisfy the requirement of the principles of natural justice. He further submitted that in the judgment dated

F 26.02.2010 in *Nagar Palika Parishad & Ors. v. State of U.P. & Ors.* (Writ Petition (C) No.56954 of 2009) the Allahabad High Court has held that dissolution of a Municipality of a smaller urban area for the purpose of upgradation to Municipal Corporation of a larger urban area cannot be termed as

G dissolution as envisaged under Article 243U of the Constitution and the proviso to Article 243U is not violated if no opportunity of hearing is given to the Municipality before such dissolution. He submitted that though Special Leave Petition (C) No.13400 of 2010 was filed against the aforesaid judgment dated

H 26.02.2010 of the Allahabad High Court, this Court dismissed

hearing before it was dissolved and before the Administrator was appointed by the notification dated 20.05.2011. He submitted that after the judgment of the Division Bench of the High Court on 23.06.2011, the Government of Uttarakhand invited objections/suggestions by a public notice dated 29.06.2011, but no hearing was given to the Municipality and yet the Haridwar Municipality was again dissolved and an Administrator was appointed in its place by the impugned notification dated 21.07.2011 of the Government of Uttarakhand.

8. Mr. Hansaria submitted that it is a settled proposition of law that if a statute conferring power on an authority to take a decision having civil consequences does not expressly prohibit a personal hearing before the decision is taken, the rule of fair play requires that an opportunity of personal hearing is afforded to the persons likely to be affected by the decision. In support of this proposition, he cited the decisions in *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* [(1978) 1 SCC 405], *S.L. Kapoor v. Jagmohan & Ors.* [(1980) 4 SCC 379] and *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664]. He submitted that Section 8-AA of the Act which empowers the State Government to dissolve a Municipal Council for the purpose of constituting a Municipal Corporation in its place does not expressly prohibit an opportunity of hearing to be given to the Municipal Council before its dissolution and therefore a personal hearing to the Municipal Council has to be granted where the State Government is of the opinion that the Municipal Council is to be dissolved for the purpose of constituting a Municipal Corporation in its place.

9. Mr. Hansaria next submitted that it will be clear from the language of sub-section (1) of Section 8-AA of the Act that dissolution of a Municipal Council is to take place only if the State Government is of the opinion that until the due constitution

the Special Leave Petition with costs by order dated 25.08.2010. A

Findings of the Court

11. We have considered the submissions of learned counsel for the parties and we are of the opinion that the earlier judgment of the Division Bench of the High Court dated 23.06.2011 holding that an opportunity of hearing must be given to persons likely to be affected by dissolution of the Municipal Council, Haridwar though not binding on this Court is binding on the parties in Special Appeal No.104 of 2011 in which the aforesaid judgment was rendered because of the principle of res judicata. The State Government of Uttarakhand was the appellants in the aforesaid Special Appeal No.104 of 2011 and it cannot therefore now contend that a hearing was not required to be granted to the Municipal Council, Haridwar, before it issued the two notifications dated 21.07.2011 dissolving the Haridwar Municipality and appointing an Administrator. B
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12. Hence, the first question that we have to decide is whether an opportunity of hearing was granted to the Municipal Council, Haridwar before the two notifications dated 21.7.2011 were issued dissolving the Haridwar Municipality and appointing an administrator under Section 8-AA of the Act. The public notice which was issued on 29.06.2011 soon after the judgment dated 23.06.2011 of the Division Bench of the High Court in Special Appeal No.104 of 2011 is extracted hereinbelow: E
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"Under Section 3 sub-section (2) of Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act No.2 of 1959) (as applicable in the State of Uttarakhand) read with Article 243 U of Part 2, it is the considered opinion of the State Government that smaller Urban Area Nagar Palika Parishad, Haridwar be converted into a larger Urban Area and consequently into a Municipal Corporation, Haridwar. G

A In view of the above, the Chairman of Nagar Palika
Parishad, Haridwar, the councilors of Nagar Palika
Parishad, Haridwar and the entire public who ordinarily
reside in the said area are invited to give their objections
and suggestions. The written objections and suggestions
B should reach the office of Director, Department of Urban
Development, Uttarakhand 43/6, Mata Mandir Marg
Dharmpur, Dehradun by 11th July 2011. Any suggestion
and objection received after the said notified date will not
be accepted. On the receipt of the written objections and
C suggestions, a hearing would be done on 13th July 2011
by Principal Secretary, Urban Development Department,
Government of Uttarakhand in the office of Director,
Department of Urban Development, Uttarakhand 43/6,
Mata Mandir Marg, Dharmpur, Dehradun. The time would
D be 1.30 P.M. to 4.00 P.M. During the hearing the persons
would also be given an opportunity of personal hearing.
After receiving such objections and suggestions and after
considering the same, the final decision to convert the
place into a larger Urban Area will be taken."

E It will be clear from the aforesaid public notice dated
29.06.2011 issued by the Government of Uttarakhand that the
Chairman of the Haridwar Municipality, the Councilors of
Haridwar Municipality and the entire public who ordinarily reside
F in the area were invited to give their objections and
suggestions. It will also be clear from the public notice dated
29.06.2011 extracted above that on receipt of the written
objections and suggestions, a hearing was to be conducted on
13th July 2011 by Principal Secretary, Urban Development
G Department, Government of Uttarakhand between 1.30 p.m. to
4.00 p.m. and during the hearing the persons were to be given
an opportunity of personal hearing on the objections. By a
subsequent corrigendum the date of hearing was altered to
16.07.2011. We further find from paragraph 4 of the order
dated 19.07.2011 annexed to the counter affidavit filed on
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behalf of respondent Nos. 1 and 2 as Annexure C-I that the Principal Secretary Urban Development Department, Government of Uttarakhand has provided an opportunity of hearing to the objectors on their respective objections on 16.07.2011 from 11.00 a.m. to 3.00 p.m. at Kumbh Fair Controlling House, Haridwar and amongst the objectors there were several Municipal Councilors of Haridwar Municipality, namely Dinesh Joshi, Rakesh Prajapati, Yashoda Devi, Leela Devi, Ashok Sharma, Jagdhir Singh, Nikhil Mehta, Idris Ansari, Satya Narayan, Karuna Sharma, Sanjay Sharma, Radhey Krishna, Prabha Ghai and Ram Ahuja. Hence, the appellant, who was the Chairman of the Municipal Council, Haridwar could have also participated in the hearing in support of his objections. We cannot, therefore, find any infirmity in the impugned judgment of the Division Bench of the High Court that an opportunity of hearing was actually given to all persons likely to be affected by the two notifications dated 21.07.2011.

13. At the time of hearing of this appeal, we were inclined to consider the other contention of Mr. Hansaria that the State Government must form an opinion that until the due constitution of the Municipal Corporation for an area, "it is expedient" to dissolve the Municipal Council from a specified date and to direct that all powers, functions and duties of the Corporation shall as from the specified date, be vested in and be exercised, performed and discharged by the Administrator appointed by the State Government in view of the language of sub-section (1) of Section 8-AA of the Act. But we find that this ground was not raised in the Writ Petition before the High Court nor raised in the special leave petition before this Court. We further find that pursuant to the two notifications dated 21.07.2011, the elections to the Municipal Corporation have been notified to be held and completed by 30.04.2013. Hence, even if the appellant succeeds on this point, we cannot direct restoration of the Haridwar Municipality after the constitution of the Municipal Corporation, Haridwar. For these reasons, we refrain from

A considering this question in this appeal and leave this question open to be decided in some other appropriate case.

14. In the result, we do not find any merit in this appeal and we accordingly dismiss the same, but without costs.

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K.K.T.

Appeal dismissed.