



2026:AHC-LKO:47478-DB

A.F.R.
Reserved on 15.04.2026
Delivered on 17.07.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 7090 of 2023

Gudia Goswami and 293 others

.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. of Panchayati Raj, Lko. and 10
others

.....Respondent(s)

Counsel for Petitioner(s)	: Sharad Pathak, Piyush Pathak
Counsel for Respondent(s)	: C.S.C., Pankaj Gupta

Court No. - 5

HON'BLE ALOK MATHUR, J.
HON'BLE AMITABH KUMAR RAI, J.

(Delivered by Hon. Amitabh Kumar Rai, J.)

1. Heard Shri Sharad Pathak, learned Senior Counsel assisted by Shri Piyush Pathak, learned counsel for the petitioners and Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State-respondent and Shri Pankaj Gupta, learned counsel for the respondent nos.10 and 11.

Village Panchayat Karua as mentioned at Item No.268 of the Notification dated 19.04.2023, which is annexed as Annexure No.1 to the writ petition.

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the report dated 11.04.2023 submitted by opposite party nos.7 to 9 recommending for de-notification of Village Panchayat Karua, Tehsil Colonelganj, District Gonda which is annexed as Annexure No.2 to this writ petition.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to restore the status of Village Panchayat Karua as was existing prior to issuance of notification dated 19.04.2023 and further the time falling in between may be excluded from the existing term of 5 years of petitioner no.1 as well as other related members of Gram Sabha Karua.”

3. Brief facts of the present case as canvassed by the learned counsel for the petitioners are that erstwhile Gram Panchayat Karua Development Block Colonelganj, District Gonda was a Gram Panchayat constituted under Section 12 of the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as "the Act, 1947"). In the last election of the Gram Panchayat held in the year 2021-22, petitioner No.1 was elected as Pradhan. The tenure of the Gram Panchayat was five years, which has come to an end on 01.05.2026.

4. In the meantime, the State Government issued a notification dated 21.10.2022 under Section 3 of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as the Act, 1916), whereby a certain area of Gram Panchayat Karua was included within the territorial jurisdiction of

Gram Panchayat Karua was merged and included in Gram Panchayat Kumhraura falling within Development Block Colonelganj, District Gonda.

5. A perusal of the reasons recorded against Entry No.268 of the notification dated 19.04.2023 indicates that a part of the population and area of Gram Panchayat Karua had been merged into Nagar Palika Parishad, Colonelganj, District Gonda pursuant to Notification No.1825/नौ-6-2022-12सीवी/2022 dated 27.09.2022. As a consequence, Gram Panchayat Karua ceased to fulfil the statutory requirements for its continued existence as a Gram Panchayat. Accordingly, the remaining area of Gram Panchayat Karua was merged with Gram Panchayat Kumhraura.

6. Assailing the notification dated 19.04.2023, learned counsel for the petitioners submits that the remaining area of Gram Panchayat Karua, which has been included/merged with Village Panchayat Kumhraura is the result of an illegal and arbitrary exercise of power. It is submitted that the population of Gram Panchayat Karua even after the exclusion of the area included in Nagar Palika Parishad, Colonelganj, District Gonda pursuant to the notification dated 27.09.2022 is 1,719 out of which 1,104 are voters. This satisfies the minimum population requirement of 1,000 prescribed under Section 11-F of the Act, 1947.

7. Learned counsel for the petitioners has submitted that an incorrect report dated 13.02.2023 was forwarded by respondent no.5, District Panchayat Raj Officer, Gonda to respondent no.4, Chief Development Officer, Gonda on the basis of which the notification dated 19.04.2023 was issued. It has further been submitted that relying upon the said

8. It has been alleged that upon learning of the aforesaid development, petitioner no.1, being Gram Pradhan of Gram Panchayat Karua, submitted a representation dated 01.03.2023 to respondent no. 4, Chief Development Officer, Gonda. Acting upon the said representation, respondent no.4 issued a letter dated 03.03.2023 directing respondent no.6, Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda to inquire into the matter and submit the correct factual report. Thereafter, another letter dated 06.03.2023 was sent by Chief Development Officer, Gonda to Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda. However, no response was received. Consequently, District Magistrate, Gonda again addressed a letter dated 28.03.2023 to Sub-Divisional Magistrate, Tehsil Colonelganj, District Gonda directing him to submit the correct report. In the meantime, Block Development Officer, Colonelganj, District Gonda, vide his letter dated 29.03.2023 forwarded a report regarding the Gram Panchayats affected by the extension of the territorial limits of Nagar Palika Parishad, Colonelganj, Gonda, wherein the remaining population of Gram Panchayat Karua was shown as 785 as per 2011 Census.

9. Feeling aggrieved, petitioner no.1 submitted a detail representation dated 31.03.2023 to Chief Development Officer, Gonda, wherein it was stated that even after the extension of the territorial limits of Nagar Palika Parishad, Colonelganj, Gonda, 1,104 voters continued to reside in the remaining area of Gram Panchayat Karua. It was further asserted that the report indicating the existing population of the remaining area of Gram Panchayat Karua as 785 was factually incorrect.

10. Upon the objections raised by the petitioners, respondent no.4, Chief Development Officer, Gonda issued a letter dated 31.03.2023

11. It has been submitted that despite of the constitution of the three-member Committee vide letter dated 31.03.2023, no further steps were taken to decide the objections filed by petitioner no.1. Consequently, petitioner no.1 submitted another representation dated 12.04.2023. Thereafter, Writ-C No.3297 of 2023 was filed before this Court seeking, inter alia, quashing of the report, if any, submitted by the district authorities for the de-notification of Gram Panchayat Karua and a direction to complete the inquiry by the three-member Committee as directed by Chief Development Officer, Gonda vide letter dated 31.03.2023. The said writ petition was disposed of by order dated 25.04.2023 directing that the inquiry be completed unless there existed any legal impediment. For the said purpose, liberty was also granted to petitioner no.1 to approach Chief Development Officer, Gonda.

12. It has been submitted that petitioner no.1 served a copy of the order dated 25.04.2023 upon the Chief Development Officer, Gonda. However, nothing was communicated to the petitioner no.1. Subsequently, petitioner no.1 came to know that the notification dated 19.04.2023 had already been issued de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhaura. Thereafter, the petitioners submitted a detail representation dated 25.05.2023 to respondent no.2, Director, Panchayati Raj, Lucknow under Rule 3-AAA(2) of U.P. Panchayati Raj Rules, 1947 (hereinafter referred to as the Rules, 1947) read with Section 8 of the Act, 1947 through registered post raising all objections.

13. The challenge raised by the petitioners in the present writ petition to the notification dated 19.04.2023, whereby Gram Panchayat Karua was de-notified and merged with Gram Panchayat Kumhaura is based

assertion has remained un rebutted. It is, therefore, contended that the entire exercise culminating in the issuance of notification dated 19.04.2023 de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura is illegal, arbitrary and founded on incorrect facts.

14. This Court while entertaining the present writ petition passed an order dated 18.02.2025, which reads as under :

“1. Heard Shri Sharad Pathak, learned Counsel for the petitioners, Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State.

2. The contention of petitioners' counsel inter alia is that there are 293 petitioners in the writ petition and the details of their family members are mentioned in a chart annexed as Annexure No.3 to the writ petition and the total of the said members comes to 1719, therefore, to say that because in the Census of 2011, the population of the village at least the area which remains after merger of the other part with Nagar Palika Colonelganj was less than 1000, therefore, by the notification dated 19.04.2023, the said remaining part has been merged with another Gaon Sabha, appears to be apparently unreasonable.

3. We grant one opportunity to the Collector, District-Gonda to ascertain the aforesaid facts as to whether all the petitioners are residents of Gaon Sabha Karua, Tehsil Colonelganj or not, if so, whether the details of the family members mentioned in Annexure No.3 to the writ petition i.e. their number is correct or not. As if it is found to be correct then even if the case of the opposite parties is that these are the only residents of the said remaining part of

annexed as Annexure No.13 (page No.205). In this regard, learned Counsel for the petitioners has placed reliance upon Section 8 of the U.P. Panchayati Raj Act, 1947 and Rule 3AAA(2) of the U.P. Panchayat Raj Rules, further, to submit even if the factual position is not found to be as mentioned above, even then the remaining part of the Gaon Sabha was entitled to continue as Gaon Sabha Karua as according to him, remaining part of the Gaon Sabha cannot be merged in another Gaon Sabha.

4. List/put up this case on 20.03.2025 amongst top ten cases.

5. Shri Rajesh Tiwari, learned Additional Chief Standing Counsel shall communicate our order to all the opposite parties and ensure its compliance. Affidavit of compliance to be filed by the next date of listing.”

15. In terms of the order dated 18.02.2025, an affidavit of compliance was filed and sworn by Sub-Divisional Magistrate, Colonelganj, Gonda, wherein it has been stated that out of 1,719 persons including the petitioners only 1,193 members submitted their Aadhaar cards and Pariwar Registers. The inquiry report dated 14.04.2025 on the basis of which the said affidavit has been filed and which has also been annexed thereto indicates that the claim of the petitioners is based on the actual population existing as on the date when the de-notification order dated 19.04.2023 was passed. However, the de-notification exercise was undertaken on the basis of the population figures reflected in the 2011 Census, which indicate that the population of the remaining area of Gram Panchayat Karua was 785 below 1,000. Accordingly, Gram Panchayat Karua was de-notified.

the subsequent affidavits filed by them. Rather, the stand taken by the respondents is that the exercise of de-notification was undertaken on the basis of the population figures reflected in the 2011 Census, according to which the population of the remaining area of Gram Panchayat Karua had fallen below 1,000 after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, whereby the territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda were extended resulting in the inclusion of a part of Gram Panchayat Karua within the said Nagar Palika Parishad.

17. The issue that falls for consideration before this Court is whether the notification dated 19.04.2023, whereby Gram Panchayat Karua was de-notified based on the population figures reflected in 2011 Census is valid, particularly when no exercise was undertaken to determine the current population of Gram Panchayat Karua while exercising powers under Sections 3 and 11-F of the Act, 1947 for de-notifying Gram Panchayat Karua and merging it with Gram Panchayat Kumhraura.

18. The statutory scheme under the Act, 1947 provides for the establishment of a Gram Sabha by issuing a notification under Section 3 of the Act, 1947 in the Official Gazette in respect of a village or a group of villages.

19. Section 11-F of the Act, 1947 provides that the State Government may, by notification, declare any area comprising a village or a group of villages to be a Panchayat area, having, so far as practicable, a population of 1,000.

20. Section 3 of the Act of 1947 reads as under :

having the largest population shall be specified as the name of the Gram Sabha.”

21. Section 11-F of the Act of 1947 reads as under :

“11-F-Declaration of Panchayat Area- *The State Government may, by notification, declare any area comprising a village or group of villages, having, so far as practicable, a population of one thousand, to be a Panchayat area for the purposes of this Act by such name as may be specified:*

Provided that for the purposes of declaration of a Panchayat area no revenue village or any hamlet thereof shall be divided:

[Provided further that in the hill districts of Nainital, Almora, Pithoragarh, Tehri, Pauri, Dehradun, Chamoli or Uttarkashi, the State Government may declare the area of a Gaon Sabha established under Section 3 of this Act as it stood before the commencement of the Uttar Pradesh Panchayat Laws (Amendment) Act, 1994, to be a Panchayat area though such area may have a population of less than one thousand.]

(2) The State Government may, on the request of the Gram Panchayat concerned or otherwise and after previous publication of the proposal, by notification at any time-

(a) modify the area of any Panchayat area by including therein or excluding therefrom any area of a village or group of villages;

(b) alter the name of the Panchayat area; or

(c) declare that any area shall cease to be a

made under the Act of 1916. The affairs of such area shall thereafter be governed by the provisions of the Act, 1916 and the identity of such Gram Panchayat or the part of the Gram Panchayat included within the municipality shall cease to exist. Thus, after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, the part of Gram Panchayat Karua included within the extended territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda lost its identity as part of Gram Panchayat Karua as the said area acquired the status of a municipality. The question that falls for consideration is whether remaining area of Gram Panchayat Karua fulfills the requirement necessary for retaining its identity as a Gram Panchayat.

23. The term “Population” as defined in Section 2(l) of the Act, 1947 means the population as ascertained in the last preceding census, the relevant figures whereof have been published.

24. It is not in dispute that the last census was held in the year 2011. Accordingly, the term “Population”, wherever it finds mention in the Act of 1947, has to be understood in terms of its statutory definition, meaning thereby that the population as ascertained in the last census i.e. Census 2011 has to be taken into consideration for any purpose required under the Act of 1947. Section 11-F of the Act, 1947, in clear terms, provides that a Panchayat area shall, so far as practicable, have a population of 1,000.

25. It is not in dispute that the population of the remaining area of Gram Panchayat Karua after the merger of a part thereof with Nagar Palika Parishad, Colonelganj, District Gonda as per the last Census of 2011 is 785 and this fact remains uncontroverted.

population of more than 1,000 as required under Section 11-F of the Act, 1947.

27. We are not inclined to accept the argument so advanced by learned counsel for the petitioners in the face of the statutory provisions contained in the Act of 1947 as discussed hereinabove. The term "Population" referred to in Section 11-F of the Act, 1947 has to be interpreted in the light of its definition contained in Section 2(l) of the Act, 1947, wherein it is defined to mean the population as per the last census, the figures of which have been published. It is not in dispute that the 2011 Census is the last census, the figures of which have been published. According to the said census, the population of the remaining area of Gram Panchayat Karua is 785, which is far below the required population of 1,000, a precondition for maintaining its identity as a Gram Panchayat under Section 11-F of the Act, 1947. This Court, in the exercise of its powers under Article 226 of the Constitution, cannot interfere so as to interpret a statutory provision otherwise than what it has been expressly provided in the statute itself.

28. The petitioners have also placed reliance on Section 8 of the Act, 1947, to contend that after the inclusion of a part of Gram Panchayat Karua into Nagar Palika Parishad, Colonelganj, District Gonda, the jurisdiction of Gram Panchayat Karua should have been reduced to such an extent so as to retain its independent identity as a Gram Panchayat. The argument so advanced cannot be accepted, for the reason that the precondition for retaining an independent identity as a Gram Panchayat is, so far as practicable, a population of 1,000, as prescribed under Section 11-F of the Act, 1947. If such an interpretation of Section 8 of the Act, 1947, is accepted, then even the reduced area of a Gram

29. Section 8 of the Act of 1947 reads as under :

“8. Effect of change in population or inclusion of the area of a Gram Panchayat in Municipalities, etc. – If the whole of the area of Gram Panchayat is included in a city, municipality, cantonment, notified area, or 2 [Nagar Panchayat] the [Gram Panchayat] shall cease, and its assets and liabilities shall be disposed of in the manner prescribed. If a party of such area is so included, its jurisdiction shall be reduced by that part.”

30. A bare perusal of Section 8 of the Act, 1947 would reveal that upon the inclusion of an area of a Gram Panchayat within a city, municipality, cantonment, notified area or Nagar Panchayat, the jurisdiction of the Gram Panchayat stands reduced to the extent of such area. However, it does not follow that the reduced area of the Gram Panchayat would necessarily retain its separate identity as a Gram Panchayat if it otherwise does not fulfil the statutory requirements prescribed for a Gram Panchayat. Section 8 of the Act, 1947 has to be read in consonance and harmony with the other provisions of the Act, 1947.

31. The reference to Rule 3-AAA of the U.P. Panchayati Raj Rules, 1947 by the petitioners is also misconceived as the same has no relevance to the controversy involved in the present writ petition. Rule 3-AAA provides that upon inclusion of the area of a Gram Sabha within a municipality, cantonment, notified area or town area, the Gram Sabha shall cease to exist and its assets and liabilities shall be transferred to the local body in which such area is included. The said provision mandates the transfer of the assets and liabilities of the Gram Sabha pertaining to

was raised. However, such an issue could only be raised by Gram Panchayat Kumhraura in which the remaining area of the erstwhile Gram Panchayat Karua was merged vide notification dated 19.04.2023 and such issue is not subject matter of the present writ petition.

33. The petitioners, in their pleadings, have not alleged any violation of procedural requirements in the issuance of the notification dated 19.04.2023. They have challenged the said notification solely on the ground that the current population of Gram Panchayat Karua even after the inclusion of a part thereof in Nagar Palika Parishad, Colonelganj, District Gonda is more than 1,000. This ground is not tenable in the eyes of law in view of the admitted fact that as per Census 2011, the population of the village was only 785, much below the figure of 1000.

34. Learned counsel for the petitioners has placed reliance upon the judgment rendered by Hon'ble Supreme Court in the case of **Baldev Singh and others vs. State of Himachal Pradesh and others** reported in (1987) 2 SCC 510, particularly paragraph 4 thereof, to contend that no opportunity of hearing was afforded to the petitioners before the issuance of the notification dated 19.04.2023. Paragraph 4 of the said judgment is reproduced herein below :

“4. Appellants' counsel has raised a more serious issue, namely, denial of an opportunity of being heard before the notified area 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

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 incidence of tax and the like.”

35. We find from the pleadings of the writ petition that no such ground has been taken by the petitioners regarding the denial of an opportunity of hearing before the issuance of the notification dated 19.04.2023. The petitioners have only raised an issue through their representations/objections submitted before the authorities regarding the population of the remaining area of Gram Panchayat Karua after the inclusion of a part thereof in Nagar Palika Parishad, Colonelganj, District Gonda. Thus, it cannot be said that the petitioners have raised any issue pertaining to procedural aspects in the issuance of the notification dated 19.04.2023. In fact, the State Government has issued Government Orders dated 16.08.2014, 27.10.2020 and 23.12.2020, whereby guidelines have been prescribed for exercising powers under Section 11-F of the Act, 1947. However, the petitioners have not alleged any violation of the provisions contained in the aforesaid Government Orders.

“12. It is implicit in the statutory provision that while issuing a final notification, the area as originally proposed to be included in the transitional area, cannot be increased in such a manner, so as to change the entire complexion and character of the preliminary notification. The object of Section 4 is to provide opportunity to the general public which would include the petitioners herein, to file objections against the proposal. The Governor exercises power under Article 243Q having regard to the factors laid down under clause (2), i.e., 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 factor as he may deem fit. The objection could be on any of the above aspects, apart from inclusion/exclusion. This is an invaluable right conferred in the general public with avowed object of strengthening their hands in all facets of local self governance. In the absence of these villages being part of the proposal notified under Section 4, the right to file objection has been rendered illusory making Section 4 of the Act redundant. It amounts to notifying seven villages in the transitional area without there being any previous publication, as required by Section 4. What cannot be done directly cannot be done indirectly. It is nothing but colourable exercise of power.”

37. A perusal of paragraph 12 of the said judgment and order, relied upon by the petitioners indicates that it relates to the preliminary notification issued under Section 4 of the Act, 1916, which provides for the procedure for issuance of a notification referred to under Section 3 of

Gram Panchayat Karua within Nagar Palika Parishad, Colonelganj, District Gonda by the said notification was bad in law.

38. In the absence of any such challenge to the notification issued earlier under Section 3 of the Act, 1916 in the present writ petition, we cannot delve into such an issue in the present writ petition.

39. The petitioners have further placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of **State of U.P. vs. Pradhan Sangh Kshetra Samiti**, reported in 1995 Supp (2) SCC 305, particularly paragraph 44 of the judgment, which is quoted hereinbelow:

“44. It is for the Government to decide in what manner the panchayat areas and the constituencies in each panchayat area will be delimited. It is not for the court to dictate the manner in which the same would be done. So long as the panchayat areas and the constituencies are delimited in conformity with the constitutional provisions or without committing a breach thereof, the courts cannot interfere with the same. We may, in this connection, refer to a decision of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa [(1961) 2 SCR 537 : AIR 1961 SC 459] . In this case, the petitioner-mineowners, had among others, challenged the method prescribed by the legislature for recovering the cess under the Orissa Mining Areas Development Fund Act, 1952 on the ground that it was unconstitutional. The majority of the Bench held that the method is a matter of convenience and, though relevant, has to be tested

40. We are afraid to accept that the aforesaid proposition of law laid down in paragraph 44 of the judgment passed in **Pradhan Sangh Kshetra Samiti (supra)**, in any manner, supports the case of the petitioners. On contrary, it supports the case of the respondents, inasmuch as it has not been questioned that the notification dated 19.04.2023 was issued in violation of the statutory provisions contained in Sections 3 and 11-F of the Act, 1947. Section 5 of the Act, 1916 provides that if any area is included within a municipality, such area shall thereafter become subject to all notifications, rules, regulations, bye-laws, orders and directions issued or made under the Act of 1916. The affairs of such area shall be governed by the provisions of the Act of 1916 and the identity of such Gram Panchayat or the part of the Gram Panchayat included within the municipality shall cease to exist. Thus, after the issuance of the notification dated 21.10.2022 under Section 3 of the Act, 1916, the part of Gram Panchayat Karua included within the extended territorial limits of Nagar Palika Parishad, Colonelganj, District Gonda lost its identity as part of Gram Panchayat Karua, as such area acquired the status of a municipality. The stand taken by the respondents referring to the term “Population” as defined under Section 2(l) of the Act, 1947 goes to the root of the matter as the case of the petitioners is that the term “Population” should be construed to mean the actual population existing on the date on which the notification was issued and not the population reflected in the last census. In fact, paragraph 44 of the judgment relied upon by the petitioners does not support the case set up by them in the present writ petition.

41. The petitioners have also relied upon the judgment rendered in the case of **Kishorchandra Chhanganal Rathod vs. Union of India and others** reported in (2024) 13 SCC 227. The said judgment relates to the exercise

42. Further, when we analyze the notification dated 19.04.2023 issued under Sections 3 and 11-F of the Act, 1947, we find that the aforesaid exercise of issuing the notification is in furtherance of the power conferred under the statutory provisions contained in Sections 3 and 11-F of the Act, 1947, which, in essence, constitutes conditional legislation. The power to include a particular area within the prescribed jurisdiction conferred under Section 11-F of the Act, 1947 is not merely an administrative power. The Hon'ble Supreme Court, in **Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur** reported in (1980) 2 SCC 295 while dealing with Section 3 of the U.P. Town Areas Act, 1914 held after considering the nature of the power exercised by the State Government under Section 3 that the said power is legislative in character. Paragraphs 7, 8, and 17 of the said judgment are reproduced herein below:

“7. We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area under Section 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting their representations regarding such action. The power of the State Government to make a declaration under Section 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. Dealing with

the operation of the audi alteram partem rule. It is generally assumed that in English law the making of a subordinate legislative instrument need not be preceded by notice or hearing unless the parent Act so provides.”

8. In Bates v. Lord Hailsham of St. Marylebone [(1972) 1 WLR 1373 : (1972) 3 All ER 1019, 1023-1024] the facts were these: In 1964, the British Legal Association was formed. Out of about 26,000 practising solicitors some 2,900 were members of the association. The Lord Chancellor announced on May 1, 1972, that the scale of fees under Schedule I to the Solicitor's Remuneration Order, 1883 were proposed to be abolished and that for all conveyancing transactions the system of quantum meruit was to be applied. On June 6, pursuant to Section 56(3) of the Solicitors Act, 1957, the Law Society was sent by the committee set up under Section 56(1) a draft of the order proposed to be made under Section 56(2). The draft order was published in The Law Society's Gazette on June 21. The association sent out two circulars about the proposed order, the first at the end of May, to all solicitors, and the second on July 17, making a series of accusations against the Lord Chancellor and the Law Society. On July 11, the association sent printed submissions to the statutory committee, requesting that the order should not be approved at this juncture and that the Lord Chancellor should seek further consultations with the association before finalising the order.

refraining from making the order in such terms as the committee approved. On July 18, the plaintiff as a member of the national executive committee of the association, took out a writ against all members of the statutory committee, seeking a declaration and an injunction, and on July 19, at 2 p.m. having previously notified the Treasury Solicitor of the intention, he moved the court ex parte, seeking to restrain the committee from holding the meeting which was to be held at 4.30 p.m. on that day. The motion was dismissed by Megarry, J., and we feel rightly with the following observations:

“In the present case, the committee in question has an entirely different function: it is legislative rather than administrative or executive. The function of the committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally; and the terms of the order will have to be considered and construed and applied in numberless cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected by delegated legislation, and affected very substantially, are

delegated legislation and considering objections (see, for example, the Factories Act, 1961, Schedule 4), I do not know of any implied right to be consulted or make objections, or any principle on which the courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attack, whether by injunction or otherwise; but what is important is not its form but its nature, which is plainly legislative.”

.....17. We are, therefore, of the view that a notification issued under Section 3 of the Act which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and that it cannot be characterised as a piece of subordinate legislation. In view of the foregoing, we hold that the contention of the plaintiff that the declaration made by the State Government under Section 3 of the Act declaring the area in which the sugar factory of the plaintiff is situated as a part of the Tulsipur town area is invalid is not tenable.”

(Emphasis supplied)

43. When we go through the provisions of Sections 3 and 11-F of the Act, 1947, which have already been quoted in the earlier part of the judgment, we find that specific conditions have been prescribed for the declaration of a panchayat area. This exercise is required to be

is legislative in character. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of **State of Punjab v. Tehal Singh and Others** reported in (2002) 2 SCC 7, wherein the Hon'ble Supreme Court, while examining Sections 3 and 4 of the Punjab Panchayati Raj Act, 1994 held as follows in paragraphs 4 to 8 of the said judgment:

“4. Coming to the first question, it is necessary to set out the relevant provisions of Sections 3 and 4 of the Act, which are as under:

“3. Establishment of Gram Sabha areas.—(1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:

Provided that a new Gram Sabha area may be constituted for any village or group of contiguous villages in respect of a separate distinct abadi or group of abadis having a population of not less than two hundred taking into consideration its physical distance from the main village or villages, as the case may be and other relevant facts:

Provided further that neither the whole nor any part of —

(a) a Notified Area under Section 241 of the Punjab Municipal Act, 1911, or any other Act for the time being in force; or

(b) a Cantonment; or

(c) a Municipality of any class; or

(d) a Municipal Corporation;

shall be included in a Gram Sabha area unless the majority of voters in any Notified Area or

Gram Sabha and the Notified Area Committee or the Municipal Committee shall cease to exist.

(2) That State Government may, by notification, include any area in or exclude any area from the Gram Sabha area.

4. Constitution of Gram Sabha.—(1) The State Government may, by notification establish a Gram Sabha by name for every area declared as Gram Sabha area under Section 3.

(2) Every person who is entered as voter on the electoral roll prepared by the State Election Commission and for the time being in force pertaining to the area of a Gram Sabha, shall be member of the Gram Sabha.”

5. Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of Sections 3 and 4 of the Act. The said power could either be legislative, administrative or quasi-judicial.

6. In Rameshchandra Kachardas Porwal v. State of Maharashtra [(1981) 2 SCC 722] it was held that making of a declaration by notification that certain place shall be the principal market yard for a market area under the relevant Agricultural Produce Market Act was an act legislative in character. In Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720] this Court while making distinction between legislative, administrative and quasi-judicial functions (SCC 725-26) (para 7)

with the requirements of policy.’ ‘Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.’ It has also been said: ‘Rule-making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class’ while, ‘an adjudication, on the other hand, applies to specific individuals or situations’. But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.”

7. The principles of law that emerge from the aforesaid decisions are: (1) where provisions of a

come into action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation; and (3) lay down future course of actions, the same is generally held to be legislative in character.

8. Viewed in the light of the statement of law stated hereinbefore, we find that the provisions of Sections 3 and 4 of the Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. Declaration contemplated under Section 3 of the Act relates to an area inhabited by the residents which is sought to be excluded or included in a Gram Sabha. The declaration under Section 3 of the Act by the Government is general in character and not directed to a particular resident of that area. Further, the declarations so made under Sections 3 and 4 of the Act do not operate for the past transactions but for future situations. Under the aforesaid situation, when declarations by issue of notifications by the Government are made under Sections 3 and 4 of the Act respectively, determining the territorial area of a Gram Sabha and establishing a Gram Sabha for

notification in the Gazette, the Gram Sabha, a body corporate comes into being with a number of powers and functions conferred upon it under the Act. As soon as a Gram Sabha is established and Gram Panchayat is constituted, they are entrusted with many general functions viz. construction, repair, and maintenance of community assets, agriculture including agriculture extension, animal husbandry, dairy and poultry, fisheries, social and farm forestry, minor forest produce, fuel and fodder, khadi, village and cottage industries, rural housing, rural electrification including distribution of electricity, non-conventional energy source, poverty alleviation programme, education including primary and secondary schools, adult and non-formal education, promotion of adult literacy, cultural activities, fairs and festivals, public health and family welfare, women and child development, social welfare etc. Further, Gram Sabhas and Gram Panchayats have been conferred numerous other powers and duties enumerated in Section 35 of the Act. Besides that, the Gram Panchayat is entrusted with the judicial functions which are civil and criminal in nature. The power exercisable under Sections 3 and 4 of the Act respectively by the Government was, therefore, not an exercise of a judicial or quasi-judicial function where the very nature of function involves the principles of natural justice or in any case of an administrative function affecting the rights of an individual. We are,

(Emphasis supplied)

44. The function of the State Government in issuing a notification under Section 3 of the Act, 1947 establishing a Gram Sabha and in issuing a notification under Section 11-F of the Act, 1947 declaring any area comprising a village or group of villages having, so far as practicable, a population of 1,000 to be a Panchayat under the Act is neither executive nor administrative; rather, it is legislative in nature. No adjudicatory duty is cast upon the Government in the discharge of these statutory functions of issuance of notification. The only question to be examined by the Government while issuing such a notification is whether the conditions prescribed under the statutory provisions have been fulfilled. In the case of conditional legislation, the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the determination of the time and manner of bringing its legislation into effect as well as the determination of the subject matter(s), area(s) etc. to which it is to extend depending on the terms of the statutory provisions conferring such discretion. In conditional legislation, the enforcement of the law depends upon the fulfilment of the prescribed condition(s) and what is required of the authority is the exercise of its power to determine whether such condition(s) have been fulfilled so as to bring into force the legislative intent.

45. Section 11-F of the Act, 1947 lays down the conditions for the declaration of a Panchayat Area, namely, that the area comprising a village or a group of villages should, so far as practicable, have a population of 1,000. A further condition is that for the purpose of declaring a Panchayat Area, no revenue village or any hamlet thereof

conditions enumerated in sub-section (1) of Section 11-F. In our view, the issuance of notifications under Sections 3 and 11-F of the Act of 1947 is an exercise undertaken by the State Government in terms of the statutory provisions contained in the Act, 1947 and the issuance of such notifications is an act of conditional legislation.

46. In the present case as discussed in the earlier part of the judgment, the area and population of Gram Panchayat Karua were reduced after merger of a part of its area with Nagar Palika Parishad, Colonelganj, District Gonda. This necessitated the issuance of a notification to include its remaining area within Gram Panchayat Kumhraura as the population, according to the Census 2011, had been reduced to 785, which was far below the minimum requirement of 1,000. This minimum population is an essential condition for the independent identity of a Panchayat Area.

47. A notification issued as an act of conditional legislation can be challenged only if it exceeds the statutory mandate, lacks the requisite precedent conditions or violates constitutional rights. The petitioners have miserably failed to point out any violation of the aforesaid mandates so as to render the notification dated 19.04.2023 illegal or bad in law. Accordingly, we do not find any infirmity or illegality in the issuance of the notification dated 19.04.2023 to the extent it has been challenged in the present writ petition.

48. In view of the aforesaid reasons, we are not inclined to interfere in the present writ petition. Accordingly, the writ petition is **dismissed**.

49. No order as to costs.