

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 310 of 2015**

Omprakash Dewangan S/o K.L. Dewangan Aged About 44 years  
President, Municipal Council Birgaon, District Raipur, R/O In Front Of  
Advani High School, Birgaon, Ps Urla, District Raipur (Chhattisgarh)

**---- Appellant****Versus**

1. State of Chhattisgarh Through Secretary, Department Of Urban Administration & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
2. The Deputy Secretary, State of Chhattisgarh, Department Of Urban Administration & Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
3. The Director, Department of Urban Administration & Rural Development, D-Block, 4th Floor, Indrawati Bhawan, Naya Raipur, District Raipur (Chhattisgarh)
4. The Collector, Raipur, District Raipur (Chhattisgarh)
5. The Municipal Council Birgaon, Through Its Chief Municipal Officer, Birgaon, District Raipur (Chhattisgarh)

**---- Respondents**


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| For Appellant         | : | Shri Mateen Siddique, Advocate. |
| For Respondent/ State | : | Shri U.N.S. Deo, Advocate.      |

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**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &**  
**HON'BLE SHRI P. SAM KOSHY, J.**

**Order On Board****Per NAVIN SINHA, C.J.****22/6/2015**

1. The present appeal arises from order dated 12.5.2015 dismissing Writ Petition (C) No. 1642 of 2014. The Learned Single Judge declined to interfere with the notification dated 22.7.2014 bearing No. F-1-11/2014/18 issued under Section 7 of the Municipal Corporation Act, 1956 (hereinafter called 'the Act') constituting the Municipal Council, Birgaon as Municipal Corporation, Birgaon.

2. Learned Counsel for the Appellant submits that the Learned Single Judge erred in not appreciating that Article 243 P(g) defines 'population' as the population figure contained in the preceding census, the relevant figures of which had been published. The same meaning of the word 'population' has to be given to Section 7(2) of the Act. According to the 2011 census, the population of Birgaon was 96294. The notification issued under Section 7(2) of the Act therefore was per-se illegal on the face of it as it did not meet the statutory and constitutional requirement of a population of one lac for being declared as a Municipal Corporation. It was next submitted that any resolution passed by the Municipal Council, Birgaon on 11.7.2009, and which may have been signed by the Appellant also in his capacity as President in Council, with regard to population base of the Municipal Council, Birgaon, is not relevant inasmuch as the Appellant was reappointed as President-in-Council in the year 2010. The earlier resolution was therefore no more relevant in the changed time circumstances. In any event if the law required a population of one lac, any resolution passed contrary to the same cannot operate as estoppel against the Appellant. The Appellant's tenure of five years, therefore, could not have been curtailed in the manner done.

3. Learned counsel for the State has supported the order under appeal submitting that it calls for no interference.

4. We have considered the submissions on behalf of the parties and find no reason to interfere with the order under appeal. It is not open for the Appellant to take shifting stands according to his convenience at different times on the same issue. The Appellant was a signatory to resolution No. 56 dated 11.7.2009. The resolution stated that the population of Birgaon was more than one lac. It was a statement of fact. It is not the case of the Appellant that during his new elected tenure from 2010, the population had reduced. The Appellant cannot be permitted to

take vacillating stand on the same set of facts. The distinction sought to be drawn by him is fanciful and merits no consideration at all.

5. The next submission that he had a tenure of five years and which could not be curtailed before expiry, has more than adequately been dealt with by the Learned Single Judge including reference to (2003) 9 SCC 731 (State of Maharashtra and Others vs. Jalgaon Municipal Council and Others) that the tenure of the Municipal Council could have been curtailed in accordance with law in exercise of powers under Section 7(2) of the Act read with Section 442. We may additionally notice that the Appellant alone claims continuance of the Council to preserve his own status as President-in-Council while his other councilors of the erstwhile Birgaon Municipal Council had intervened to oppose the writ petition supporting its declaration as Municipal Corporation.

6. We find no merit in the appeal. The appeal is dismissed.

(Navin Sinha)  
**CHIEF JUSTICE**

(P. Sam Koshy)  
**JUDGE**