

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1261 of 2016

In

Civil Writ Jurisdiction Case No. 4442 of 2016

1. Ramesh Prasad Yadav, son of Late Jaglal Rai, Resident of Village-Lodipur, P.O- Chirand, P.S.- Doriganj, District- Saran at Chapra, Presently Mukhiya of Gram Panchayat Raj, Maharajganj, Block- Chapra Sadar, District- Saran at Chapra.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Director, Panchayati Raj Department, Government of Bihar, Patna.
3. The District Magistrate-cum-District Election Officer, District Saran at Chapra.
4. The District Panchayat Raj Officer, Saran at Chapra, District- Chapra.
5. The Block Development Officer, Chapra Sadar Chapra, District- Saran Chapra.
6. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
7. The State Election Commissioner, the State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
8. The Secretary, the State Election Commission (Panchayat), Sone Bhawan Birchand Patel Path, Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr Y.V.Giri, Sr. Advocate
Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. Nasrul Hoda Khan, SC-18
For State Election Commission : Mr. Amit Srivastava, Advocate
Mr. Sanjeev Nikara, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

JUDGMENT AND ORDER

C.A.V.

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

4 15-09-2016

Albeit short, yet a significant question of law, this appeal, made under Clause 10 of the Letters Patent of this Court, has raised with regard to the application of the



definition Clause 2(ac) of the Bihar Gram Panchayat Raj Act, 2006 (hereinafter referred to as “the Act”), which defines “*population*” for the purposes of, *inter alia*, composition of Gram Panchayat, and reservation of seats for the representative of the local bodies under the Act, read with Rules 8, 15 and 16 of the Bihar Gram Panchayat Election Rules, 2006 (hereinafter referred to as the ‘Rules’), in particular and other provisions under the Act and the Rules in general.

2. Section 2(ac) of the Act defines “*population*” as under:-

“2 (ac). “*Population*” means and includes the population as ascertained at the last preceding census of which the relevant figures have been published.”

3. In this appeal, judgment and order, dated 10.06.2016, passed by the learned single Judge in CWJC No. 4442 of 2016, stands impugned, whereby the writ application, filed by the appellant herein, has been dismissed. The learned single Judge has rejected the plea of the appellant that population of the village, in question, for the purposes of the Act and Rules framed thereunder, should have been on the realistic basis and since there was no population in the said

Village, the same ought to have been treated as “*NIL*” and ought to have held that the categorization of territorial constituencies, in reference to the population of the area, had to be done as per the figure of preceding Census of the year 2011.

4. Before we approach the *core* issue involved and the rival stands taken on behalf of the contesting parties, in the present proceeding, it would be appropriate to mention a few basic facts, which are admitted and if we may say so, most crucial for deciding the issue and the dispute. The facts are: in the preceding Census of 2011, population of the village, in question, viz., Panapur under Maharajganj Panchayat Raj, in the district of Chapra, has been recorded as 2716; out of which 1450 has been recorded as *male* population, whereas 266 has been recorded as *female* population of the said Panchayat Raj. The post of Mukhiya of said Maharajganj territorial constituency No.13 has been reserved for the *female of Scheduled Caste* for 2016 Panchayat Election. The appellant, who was the petitioner, in the writ proceeding before learned single Judge, questioned the treating of the population of Panapur Village as 2716 (1450 Males and 1266 Females) on the premise that factually, the population of

Panapur Village is 'nil' and, because of inclusion of incorrect figures of the population based on 2011 Census, Mukhiya's post of Maharajganj Gram Panchayat has been wrongly categorized and reserved for Scheduled Caste (Female). It is the case of the appellant that there is no population at all in the said Village, which can be easily physically verified.

5. A question has, therefore, emerged as to whether, *population*, as recorded in preceding 2011 Census of Village Panapur, ought to have been ignored and was it permissible for any authority, under the Act, to alter the *population* figure of the said Village through any mode of evaluation/assessment, irrespective of the *population* recorded in the preceding 2011 Census.

6. Before coming to the facts further, we need to, first, take a look at various relevant provisions of the Act and the Rules framed thereunder.

7. At the very beginning of this judgment, we have extracted the definition of population as available under Section 2(ac) of the Act, which, without any ambiguity, states that it would mean the population as ascertained at the last preceding census of which relevant figures have been published.

8. Section 12 of the Act reads thus:-

“12. Composition of Gram Panchayat.-(1) The Gram-Panchayat shall consist of-

(a) The Mukhiya elected under the provisions of this Act; and

(b) Such number of directly elected members as may be notified from time to time by the District Magistrate and each of such members representing as nearly as possible a population of five hundred of the Panchayat Area.

(2) For the convenience of election, the District Magistrate shall, in accordance with such rules as may be prescribed in this behalf by the State Government, divide the area of the Gram Panchayat under the direction, control and supervision of the State Election Commission into territorial constituencies in such matter that the population of each constituency, so far as practicable, be the same throughout the Panchayat area.

(3) One member from each territorial constituency shall be elected through direct election in the manner prescribed.

(4) Every Gram Panchayat constituted under this section shall be notified in the district Gazette and shall come

into office with effect from the date appointed for its first meeting.”

9. A close reading of Section 12 of the Act makes us to understand that a Gram Panchayat shall consist of- (a) Mukhiya elected under the provisions of the Act; and (b) such number of elected members as may be notified by the District Magistrate and each of such members representing, as nearly as possible, a population of five hundred of the Panchayat Area.

10. Sub-section (2) of Section 12 of the Act requires the District Magistrate, for the purpose of convenience of election, to divide an area of Gram Panchayat, which is under the direction, control and supervision of the State Election Commission, into territorial constituencies in such a manner that the ‘*population*’ of each constituency, as far as practicable, be the same throughout the Panchayat area. The word “*population*”, occurring in the Section 12(2) of the Act, would apparently mean, in the light of definition clause 2(ac), the *population* as recorded in the preceding 2011 Census. Section 13 of the Act deals with reservation of seats, which enables the State Government to reserve not exceeding fifty percent of the total seats of Gram Panchayat for Scheduled Castes/Scheduled



Tribes, and Backward Classes. It provides that number of seats, so reserved for Scheduled Castes and Scheduled Tribes, shall bear, as nearly as may be, the same proportion to the total number of seats to be filled up by direct election in that Gram Panchayat as the “*population*” of the Scheduled Castes and Scheduled Tribes bears to the total population of that area and such seats shall be allotted by rotation to different constituencies in a gram Panchayat by the District Magistrate under the direction, control and supervision of the State Election Commission in the prescribed manner.

11. Evidently, population of Scheduled Castes and Scheduled Tribes, in a Gram Panchayat, is the sole basis for deciding reservation for a number of seats of a Gram Panchayat against for those categories. Whether the word “*population*”, occurring in first paragraph of Section 13(1), can be given a meaning other than its definition in Section 2 (ac) of the Act? Sub-section (2) of Section 13 of the Act mandates reservation up to fifty percent of women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes, as the case may be.

12. A bare examination of the provisions under the Act as referred to above, makes it abundantly clear that the



determination of population of a Village/Panchayat is fundamental requirement for fixing the post of Mukhiya. Whether the population can be ascertained on the basis of individual assessment of the authorities under the Act or whether authorities, in the light of the definition clause, i.e., Section 2(ac) will have to abide by the population as recorded in the preceding Census. This is the precise and simple question, which the appeal raises.

13. To answer the question, we need to take into account the fact that Section 146 of the Act confers rule-making power on the State Government in exercise whereof, Rules have been framed, namely, Bihar Panchayat Election Rules, 2006. Chapter 2 of the said Rules deals with constitution and assignment of number to the constituencies. Rule 3 of the Rules lays down the points to be considered in the constitution of territorial constituencies. It provides, *inter alia*, that each territorial constituency shall consist of a contiguous area and it will be so constituted that each territorial constituency may consist of a population, as far as practicable, identical with the other and the boundaries of each regional constituency be clearly defined separating it with the other by natural or artificial element. Proviso to Rule 3 lays

down, *inter alia*, that population of each territorial constituency of the Gram Panchayat will be 500 or so far may be, nearer to that. The population of each territorial constituency of the Panchayat Samiti will be 5000 or so far may be, nearer to that. Similarly, the population of each of the territorial constituency of Zila Parishad will be 50,000 or so far may be, nearer to that. Second proviso to Rule 3 enables the District Magistrate of a District to take a decision on the guidelines obtained from the State Election Commission, in the event of any difficulty is experienced in the demarcation of territorial constituencies. Rules 4, 5 and 6 refer to constitution of territorial constituencies of Gram Panchayat, Panchayat Samiti and Zila Parishad. Rule 7 lays down the procedure for assignment of number to the constituencies.

14. Rule 8 of the Rules deals with the publication of the list of territorial electoral constituency. Rule 8 (1) states that list of the territorial electoral constituencies prepared by the District Magistrate under the rule in “*Form-1*” shall, in case of Gram Panchayat and Panchayat Samiti, be published in the offices of the Gram Panchayat and the block concerned.

15. *Form -1* is in the following shape:-

“FORM-1
(See Rule 8(1), 8(4)
List of constituencies/territorial constituency
District

Block
*Constituency-
*Gram Panchayat-
*Panchayat Samiti-
(*Mukhiya/*Sarpanch/*Pramukh/*Adhayaksh)
*Zila Parishad- *Territorial Constituency
(Member)

Sl. No.	No. and name of Constituency/ Territorial Constituency	Population	*Extent of constituency/ Territorial Constituency
1	2	3	4
Place : Date : Signature of District Magistrate			

16. Evidently, the said Form consists of four columns, namely, (i) Serial No. (ii) No. and name of Constituency/Territorial Constituency (iii) Population (iv) Extent of Constituency/Territorial Constituency.

17. Sub-Rule (2) of Rule 8 permits raising of any objection with regard to anything contained in the list published under Sub-Rule (1), in writing, before the District Magistrate or an officer authorized by him within fourteen days from the date of publication of the list. Sub-Rule (3) of



Rule 8 enjoins upon the District Magistrate or an Officer authorized by him, a duty upon receipt of the objection under Sub-Rule(2) to record his decision, after necessary enquiries, which will be conclusive. Sub-Rule (4) of Rule 8 prescribes that the District Magistrate, after getting the list of territorial constituencies so decided prepared in *Form-1*, to publish it in the office of the Gram Panchayat and the block concerned.

18. Rule 9 of the Rules lays down the procedure for determination of seats for reservation in the constituency. Sub-Rule (1) of Rule 9 empowers the District Magistrate to make reservation and allotment of different constituencies for the Scheduled Castes, Scheduled Tribes and women, under various provisions of the Act including Sections 13 and 15 of the Act, under the direction, control and supervision of the State Election Commission. Sub-Rule (3) of Rule 9 envisages that the seat after reservation and allotment, for the members of Scheduled Caste/Scheduled Tribe as nearly as possible twenty percent of total seats, within overall limit of fifty percent will be allotted from all categories of women, by the District Magistrate under the supervision, control and direction of the State Election

Commission.

19. Rule 10 casts duty upon the State Election Commission to count the post of Panchayats for the purpose of reservation for which population of different categories of persons is crucial determination.

20. As has been noted above, though in the preceding Census of 2011, population of the Village Panapur was recorded as 2716, the District Magistrate recorded “nil” in the draft publication in *Form-1* published under Rule 8 (1) of the Rules, against the Village Panapur and, on that basis, final publication in *Form-1* was made showing “nil” population against the said Gram Panchayat. It appears that the State Election Commission noticed this error whereafter, the District Panchayat Raj Officer, Saran, and other Officers of the Panchayat were summoned along with relevant records and having arrived at the final conclusion that there was such error in final population figures, issued direction to rectify the same. Thereafter, necessary corrections were made in population figure as per 2011 Census. The State Election Commission, through its letter, dated 22.07.2015, directed all the District Magistrates-cum-District Election Officers of the State to

prepare the territorial constituencies and publish them, by 03.08.2015 in *Form-1* and in the District Gazette, by 17.08.2015, after making necessary correction, as per population figures available in 2011 Census.

21. In response to the said directive issued by the State Election Commission, the District Magistrate-cum-District Election Officer, Saran, issued notice for general public showing population of the Panchayat on the basis of the population figure of 2011 Census. Based on the said figure, territorial constituencies of Gram Panchayat and Panchayat Samiti were categorized.

22. Mr. Y. V. Giri, learned Senior Counsel appearing on behalf of the appellant, has submitted that there is no dispute over the fact that there is no population in the village Panapur. He has submitted that the District Magistrate of the concerned District had himself got a verification done, in this regard, through the officials of the District, who, in their report, had recorded that there was no population in Village Panapur Thana-309. However, in 2011 Census, population of the area has been found to be 2716.

23. Based on population figure of 2011 Census,



list of reserved constituencies/territorial constituencies came to be published in Form-3 under Rules 16 and 17 of the Rules, wherein, the post of Mukhiya of Gram Panchayat Raj, Maharajganj (Territorial constituency No.13) was declared reserved for Scheduled Caste (women), for 2016 Panchayat Election.

24. The appellant challenged reservation of the post of Mukhiya for a Scheduled Caste (women) as published in Form-3 on the basis that though “*nil*” population was shown in *Form-1* under Rule 8 (1), 8(4) of the Rules so far the same related to Panapur Village, but without giving the persons an opportunity to raise objection available under Rule 8(2) of the Rules, the same was altered and the population figure was shown as 2716, with 402 persons falling under the Scheduled Caste category. He took a plea that the entire exercise was done only to change the status of the constituencies and to reserve the constituency for Scheduled Caste (women). He also took a plea that factually, there is no population in the said Village and heavily relied, in this regard, on the report of the District Administration prepared on the basis of the physical verification.



25. Learned single Judge, however, dismissed the writ application holding that the District Magistrates and the State Election Commissions are bound by the statutory provisions and they are required to act within the parameters provided under the Act and the Rules so framed, in the matter of categorization of territorial constituencies in reference to the population of that area, which has to be done strictly in accordance with the population figure of the preceding Census, viz, Census figure of 2011 in the present case.

26. Assailing the order, under appeal, passed by the learned single Judge, Mr. Giri has submitted that as there was no population at all in the said Village, the authorities under the Act ought not to have altered the figures published in *Form-1*. He has submitted that as a matter of fact, there is no resident in the said village nor any voter is residing in the village. In such circumstance, he has contended that an imaginary figure, as occurring in 2011 Census, should not have been allowed to form the basis for determination of reservation to different territorial constituencies for the post of Mukhiya.

27. We have carefully gone through the materials

on record and the judgment and order under appeal. We have given our anxious consideration to the submissions advanced on behalf of the appellant and the relevant statutory provisions.

28. As has been noted at the very outset, Section 2(ac) defines “*population*” as the population ascertained in the last preceding Census. The population figure of Panapur village was, admittedly, 2716. The word “*population*”, wherever it occurs under the Act or the Rules, would essentially mean the population according to the last preceding Census, which in the present case, is the Census figure of 2011. It would amount to tinkering with the statutory requirement if the authorities are allowed to decide the population of a village or constituency on the basis of their own assessment contrary to the mandate of the law, which prescribes that the population shall mean the population figure shown in the preceding Census. It has been repeatedly held by the superior Courts, including the Supreme Court of India, that when a procedure is prescribed by the legislature, neither the Court nor any authorities can substitute another procedure according to their own notion of justice. It is settled and needs no

reiteration that when a statutory function is required to be discharged in a particular way as prescribed under the statute, all other modes of discharge are essentially forbidden.

29. No amount of argument, advanced on behalf of the appellant, that population of village Panapur, as assessed by the local administration, should form the basis for the purpose of publication of list of territorial constituencies or for the purpose of publication of reserved constituencies, under the Bihar Gram Panchayat Raj Act, 2006, or the Rules framed thereunder, can persuade us, there being clear, definite and unambiguous definition of population under Section 2(ac) of the Act.

30. We do not find any merit in this appeal, which is accordingly dismissed.

31. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, CJ: - I agree.

AFR
ArunKumar/-

(I.A. Ansari, CJ.)

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