

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8375 of 2015

Sunil Shahi, son of Sri Ram Laxan Shahi, R/o Village - Sahbajpur, P.O. - Bhikhanpura, Block - Mushahari, P.S. - Ahiyapur, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayta Rajya Department, Government of Bihar, Patna.
2. Bihar State Election Authority, Bihar, Patna.
3. District Magistrate, Muzaffarpur.
4. District Panchayat Raj Officer, Muzaffarpur.
5. Block Development Officer, Muzaffarpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate.

For the Respondent/s : Mr. Anjani Kumar, A.A.G.-4

Mr. Bajesh Kumar, A.C. to A.A.G.-4

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 06-12-2016

Heard learned counsel for the parties.

The petitioner has sought a writ of mandamus commanding the respondents to either divide the *Gram Panchayat Raj Sahbajpur* in two parts i.e. *Gram Panchayat Raj Sahbajpur* and *Gram*



Panchayat Raj Ahiyapur or grant more resources for the Government development schemes in accordance with its population.

The Constitution of *Gram Panchayat* is dealt with in Section 11 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act'). Under sub-section (1) of Section 11, the District Magistrate, subject to the general or special orders of the Government, may declare any local area comprising a village or a group of contiguous villages or part thereof to be a *Gram Panchayat*. Sub-section (2) thereof gives power to the State Election Commission to review the legality and propriety of any *Gram Panchayat*, so declared, under sub-section (1).

In the present case, the grievance is that the *Gram Panchayat Raj Sahbajpur* has a population of more than 32,000 thousand with 11,140 voters, but there is lack of development schemes keeping in view the population of voters of the said *Gram Panchayat*.

In a counter affidavit, it is stated that there is no proposal for division of *Panchayat* in the department; therefore, the claim of the petitioner for bifurcation of *Gram Panchayat* cannot be examined.

Section 11(1) of the Act reads as under:-

“11. Declaration of Gram Panchayat Area. —(1) Subject to the general or special orders of the Government, the District Magistrate may, by notification in the District Gazette, declare any local area comprising a village or a group of contiguous villages or part thereof to be a *Gram Panchayat* area with a



population within its territory as nearly as seven thousand:

Provided that the District Magistrate may, after consultation with the *Gram Panchayat* concerned, by a notification, at any time, include within or exclude from any *Gram Panchayat* area any village or part thereof and alter the name of the *Gram Panchayat*.”

A perusal of the said provision shows that the District Magistrate can declare any local area to be an area of *Gram Panchayat* when its population is as nearly as seven thousand. But such provision is not mandatory that as and when the population touches seven thousand, a new *Gram Panchayat* is to be constituted. The provision of sub-section (1) of Section 11 of the Act is directory and a provision enabling the District Magistrate to declare an area of *Gram Panchayat*. It is so apparent from the expression used, such as ‘the District Magistrate may declare any local area to be a Gram Panchayat area’. Still further, the proviso empowers the District Magistrate to include within or exclude any area from the *Gram Panchayat* after consultation with the Gram Panchayat concerned. Thus, the District Magistrate has been conferred discretion of including any area in the *Gram Panchayat* or excluding any area from the *Gram Panchayat*, but such discretion has to be exercised on fair, reasonable and transparent reasons. Since no request for bifurcation of *Gram Panchayat* has been submitted to the office of the District Magistrate, there cannot be any direction to



bifurcate *Gram Panchayat* as initially the process of bifurcation or amalgamation of the Gram Panchayat has to be taken by the District Magistrate only.

In view thereof, we do not find any merit in the writ application. The same is dismissed.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Sunil

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	21.12.2016
Transmission Date	

