

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 4825 of 2017**

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1. Subodh Singh, Son of Late Makasudan Singh, Resident of Mohalla - Naya Tola Madhopur, P.O. and P.S. Bakhtiyarpur, District – Patna.
  2. Gautam Kumar @ Karan Kumar, Son of Sri Dharambir Singh, Resident of Mohalla - Hakikatpur, P.O. and P.S. Bakhtiyarpur, District – Patna.
  3. Manoj Kumar Prabhakar, Son of Late Siya Sharan Prasad, Resident of Mohalla - Raghapur, P.O. and P.S. Bakhtiyarpur, District – Patna.
  4. Nutan Rai, Wife of Kumar Dhananjay Rai, Resident of Mohalla - Naya Tola Madhopur, P.O. and P.S. Bakhtiyarpur, District – Patna.
  5. Kishore Kunal, Son of Sri Arjun Prasad, Resident of Mohalla - Naya Tola Madhopur, P.O. and P.S. Bakhtiyarpur, District – Patna.
  6. Asharfi Rai, Son of Late Ramjivan Rai, Resident of Mohalla - Naya Tola Madhopur, P.O. and P.S. Bakhtiyarpur, District – Patna.

.... .... Petitioner/s

Versus

1. The State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
2. The State Election Commissioner, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
3. The Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Magistrate, Patna - cum - District Election Officer (Municipality), Patna, District – Patna.
5. The Sub - Divisional Officer, Barh, District – Patna.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. S. B. K. Mangalam and<br>Ms. Anita Kumari, Advocates  |
| For the SEC          | : | Mr. Amit Shrivastava and<br>Mr. Sanjeev Nikesh, Advocates |
| For the State        | : | Mr. Rajiv Roy, G.P. 1                                     |



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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 26-04-2017**

Heard Mr. S.B.K. Mangalam, learned counsel assisted by Ms. Anita Kumari, learned counsel for the petitioners; Mr. Amit Shrivastava, learned counsel assisted by Mr. Sanjeev Nikesh, learned counsel for the State Election Commission and Mr. Rajiv Roy, learned Government Pleader No. 1 for the State.

2. The petitioners have moved the Court for the following reliefs:

“(I) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the Patna District Gazette (Extraordinary Part) 58 dated 21.03.2017 published under the authority of the Respondent no. 4 whereby and where under he has published the list of Wards in Form-6 for Bakhtiyarpur Nagar Parishad on the ground that the Wards for the aforesaid Nagar Parishad has been constituted without following the instructions issued by the State Election Commission vide its letter no. 6647 dated 21.09.2016 as also without disposal of the objections filed by the objectors against the draft publication of Form-6 etc.

(II) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent Authorities for constitution of Wards for Bakhtiyarpur Nagar Parishad after following the instructions of State Election Commission contained in letter no. 6647 dated 21.09.2016 after the disposal of objection filed by the objectors including writ petitioners in accordance with law and after verification of the spot and only thereafter to notify the Municipal Election, 2017 for constitution of aforesaid Nagar Parishad.

(III) For issuance of any other appropriate



writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

3. The controversy relates to the delimitation/demarcation of Wards of Bakhtiyarpur Nagar Parishad, upon its upgradation from Nagar Panchayat. The petitioners being aggrieved by the draft notification had filed their objection before the respondent no. 5, but the same not having been considered and final publication made as per the draft publication, the petitioners have moved the Court seeking intervention.

4. Learned counsel for the petitioners submitted that as per the objections filed, there could have been a better demarcation/delimitation, balancing the average population which was required to be in every Ward. He further submitted that as per the population, the changes made were not required and the same having been done, the objection filed has also not been considered, as is required in law. Learned counsel submitted that though in the counter affidavit filed on behalf of the State, an enquiry conducted by three District Officers has been brought on record relating to the objection filed by the petitioners, but they were never heard or noticed or asked to participate in such enquiry and the same done behind their back, is a farce. Learned counsel further submitted that



even the said enquiry report is perfunctory as there are no details of any person whose statement has been recorded or any records which were looked into. Learned counsel submitted that the specific stand taken in the objection filed relating to there being a possible demarcation/delimitation of Wards with more evenly distributed population, such objection has never been considered as would be clear from the report of the Three Men Committee report dated 15.03.2017, rejecting such objections. Learned counsel further submitted that as per the requirement of the Bihar Municipalities Territorial Constituencies (Ward) Constitution Rules, 2001 (Amended) (hereinafter referred to as the 'Rules'), the respondent no. 5 was required to conduct an enquiry and then record a decision, which has not been done as he has only forwarded the report of the Three Men Committee, which did not include him, to the respondent no. 4. It was submitted that the same is also not in public interest.

5. Learned counsel for the State, on the basis of his counter affidavit, submitted that the Authorized Officer i.e., the respondent no. 5, had constituted a Three Men Committee comprising the Executive Magistrate, Barh; Sub Divisional Agricultural Officer, Barh and the Assistant District Supply Officer, Barh, who had made a spot enquiry and submitted a report on 15.03.2017, finding no merit in the objections and the respondent no.



5 had then sent the same with his recommendation/approval. He submitted that the report being endorsed and approved and recommended shows that the respondent no. 5 had also taken a decision concurring with the report and, thus, it was the decision of the respondent no. 5 also. Learned counsel further submitted that the map which shows the boundaries of various Wards cannot be said to be arbitrary or unwarranted for the reason that the boundaries are well defined and the population is within the standard population fixed by the Commission for the population of such Wards i.e., 1274 to 2274. Learned counsel submitted that the petitioners being only six in number, there was a large number of representations filed in support of the demarcation/delimitation of the boundaries of the Wards and thus, the stand of the petitioners that the exercise is against public interest also stands falsified.

6. At this stage, learned counsel for the petitioners submitted that in terms of the provisions of Section 5(5) of the Rules, the State Election Commission, *suo motu*, or on receipt of any written petition from an aggrieved person, can interfere in the matter relating to constitution of any Territorial Constituency and thus, he may be permitted to approach the State Election Commission which may be directed to consider such representation as the date for elections have not yet been notified.



7. Learned counsel for the State Election Commission raised an objection of the very maintainability of the writ petition in view of the bar imposed by Article 243ZG of the Constitution read with Section 478 of the Bihar Municipal Act, 2007. He further submitted that any observation by this Court for any consideration shall not serve the larger public interest as the same would, but necessarily, delay the entire process of election, as based on the exercise, as a consequence, the reservation of Wards may also have to be interfered with and the entire exercise would have to be gone into afresh, which is not justified in the facts and circumstances of the present case. He further submitted that both the draft publication as well as the final publication of the territorial limits of the Wards has been made after due approval of the State Election Commission.

8. Having considered the rival contentions, the Court is not inclined to interfere in the matter. The contentions of learned counsel for the petitioners may be correct to the extent that once an objection is filed, the same has to be considered by the authority concerned in accordance with law. He may further be correct in his submission that the petitioners, who have filed the objections, should have been called upon and heard in any enquiry conducted. However, such proposition may be the ideal situation, but there cannot be a straightjacket formula when the Court is called upon to



consider whether non hearing of a complainant during enquiry shall be fatal to the enquiry, and the same has to be judged on various factors, the major one being where the end result is shocking to the conscious of the Court and which may be patently and palpably erroneous or illegal and the same has resulted in miscarriage of justice. In the present case, the demarcation/delimitation of the boundaries have been done in a manner where the standard population is balanced with the ground realities and the Wards have been well demarcated by identifiable boundaries. There cannot be any ideal situation as various boundaries may exist and the scenario may keep changing with every exercise. However, there has to be finality to such exercise, and in the present case where the boundaries are well defined and the standard population has been taken care of, the exercise conducted and as reflected by the map attached to the draft and final publications, in the considered opinion of the Court, do not disclose a situation where on the ground that just because the petitioners have not been personally heard, the Court should interfere. Ultimately, the Three Men Committee of senior District Officers, had made a spot enquiry and had considered the objections of the petitioners and have come to a certain conclusion. Had such conclusion disclosed total lack of application of mind or the map prepared relating to such delimitation being of a nature where either



there were no clear-cut boundaries or the standard population fixed for Bakhtiyarpur Nagar Parishad by the State Election Commission was not adhered to, the Court would definitely have interfered in the matter and then, one of the additional grounds would have been that there was no hearing afforded or notice given to the petitioners but, as has been stated earlier, the Court, upon perusal of the materials on record, especially the map relating to such delimitation/demarcation, being satisfied that the exercise undertaken and the final result being reasonable, practical and plausible, which has also been duly approved by the State Election Commission, which is the Competent Constitutional Body for such matters, does not find that the matter requires interference. Moreover, in the present case, nothing has been shown to indicate that the delimitation/demarcation of Wards is arbitrary, impractical and not as per the requirement of the statute or the instructions issued by the State Election Commission or the same has led to miscarriage of justice. Just because there can be another delimitation/demarcation, is no justification to set aside what has already been done, moreso when what has been done is also well within the legal parameters set for such an exercise. Whatever has been done is within the parameters and flexibility provided under the existing laws, and thus, the Court would facilitate the mandate of the Constitution which requires that holding of election, at the earliest



upon becoming due, should be facilitated without unnecessary impediment, as ultimately the will of the people should be reflected through the democratic exercise of their franchise.

9. For the reasons aforesaid, the writ petition fails and is accordingly dismissed.

**(Ahsanuddin Amanullah, J.)**

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