

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4149 of 2017

Along with

Interlocutory Application No. 3035 of 2017

- =====
1. Shiv Kumar Singh, Son of Late Sudama Singh, Resident of Village- Mala, Post Office- Gurukul Methiyan, Police Station- Chapra Muffasil, District- Chapra.
 2. Binay Kumar Singh, Son of Late Umashankar Singh, Resident of Village- Methiyan, Post Office- Gurukul Methiyan, Police Station- Chapra Muffasil, District- Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Saran Division, Chapra.
4. The District Magistrate, Chapra.
5. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
6. The Executive Officer, Nagar Parishad, Chapra.
7. The Junior Engineer, Nagar Parishad, Chapra.
8. The District Panchayat Raj Officer, Chapra.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Gyan Prakash, Advocate
For the State	:	Mr. Abbas Haider- SC-6 Mr. Syed Hussain Majeed, AC to SC-6
For the Intervenor	:	Mr. P. K. Shahi, Sr. Advocate Mr. Yashraj Bardhan, Advocate
For the Nagar Parishad	:	Mr. Indu Bhushan, Advocate
For the SEC	:	Mr. Amit Shrivastava, Advocate Mr. Girish Pandey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-04-2017

Heard Mr. Rajendra Narain, learned senior counsel
assisted by Mr. Gyan Prakash, learned counsel for the petitioners; Mr.
Abbas Haider, learned SC-6 for the State; Mr. P. K. Shahi, learned
senior counsel assisted by Mr. Yashraj Bardhan, learned counsel for



the proposed intervenor in Interlocutory Application No. 3035 of 2017; Mr. Indu Bhushan, learned counsel for the Chapra Nagar Parishad and Mr. Amit Shrivastava, learned counsel assisted by Mr. Girish Pandey, learned counsel for the State Election Commission, who has also been heard in the matter, as in terms of order dated 13.04.2017, the State Election Commission was restrained with regard to taking further steps in holding election to the upgraded Chapra Municipal Corporation.

2. Learned counsel for the petitioners submitted that the proposal of the District Magistrate, Saran contained in his Letter No. 622 dated 31.07.2015, was a proposal for constitution of the Chapra Municipal Corporation which included areas of the existing Chapra Nagar Parishad as well as other areas also. It was contended that such proposal was never turned down and thus, the same was the basis for the draft publication dated 12.08.2016, but later on under the final publication dated 14.02.2017, only the existing area of the Chapra Nagar Parishad has been upgraded into Chapra Municipal Corporation, excluding the other areas which are part of the proposal of the District Magistrate contained in his letter dated 31.07.2015. Learned counsel submitted that the justification for upgradation and inclusion of all such areas is amply reflected in the letter of the District Magistrate dated 31.07.2015, but the action of the State



Government in limiting the upgradation to the existing Chapra Nagar Parishad is arbitrary. It was further submitted that even in the Memo put up before the State Cabinet for approval, the reference to the letter of the District Magistrate, Saran dated 31.07.2015 is recorded, meaning thereby that the recommendation sent for approval was the entire area reflected in that letter.

3. Learned counsel for the State submitted that the records would clarify the position to the extent that the Memo put up to the Cabinet for approval of the draft proposal itself specifically mentioned that the existing Chapra Nagar Parishad was being upgraded to Chapra Municipal Corporation. Learned counsel produced the records and drew the attention of the Court to the note sent to the Cabinet for approval. Perusal of the same reflects that two letters of the District Magistrate, Saran are mentioned therein i.e., Letter No. 112 dated 05.02.2016 as well as Letter No. 622 dated 31.07.2015. Thereafter, there is a specific proposal in Clause 3 that the Chapra Nagar Parishad be upgraded to Chapra Municipal Corporation. Learned counsel submitted that initially, under letter dated 31.07.2015, a proposal was sent which included the existing Chapra Nagar Parishad and also other areas which were under various other Gram Panchayats. He further submitted that in view of there being no detailed breakup as to what percentage of the population of



the areas which were proposed to be added were non agricultural, the Government again asked the District Magistrate to send a fresh proposal and subsequently fresh proposal has been sent under Letter No. 112 dated 05.02.2016, restricting the proposed area of the upgraded Chapra Municipal Corporation to the existing Chapra Nagar Parishad.

4. Learned counsel for the intervenor has also assisted the Court on similar lines with the help of the official records.

5. Having considered the matter, the Court does not find any irregularity, either in the procedure adopted by the State Government or in the ultimate decision of the State Government notifying the Chapra Municipal Corporation. The contention of the learned counsel for the petitioners that the draft publication was on the basis of areas which were beyond the existing area of Chapra Nagar Parishad and which were included in the proposal sent by the District Magistrate under Letter No. 622 dated 31.07.2015, does not seem to be correct for the reason that the records itself show that later on there was another proposal sent by the District Magistrate, Saran under Letter No. 112 dated 05.02.2016 and further the final note which went for the approval of the Cabinet specifically states that the proposal is for upgrading the Chapra Nagar Parishad into Chapra Municipal Corporation. Such notification having been initially issued as a draft



proposal and culminating in the final publication, without any change, obviously, cannot be faulted. The Court would like to note here that pursuant to the draft publication and before final publication, there has been no objection received from any quarter within the time specified for receiving such objection i.e., one month from the date of publication of the draft notification on 12.08.2016. Thus, the contention of learned counsel for the petitioners that the objection had been filed before final publication on 14.02.2017 i.e., on 09.02.2017 and that too through registered post becomes irrelevant as it was much beyond the time allowed of one month and was not even required to be looked into.

6. For the reasons aforesaid, the Court does not find any reason to interfere in the matter and accordingly, the writ petition stands dismissed.

7. The interim order dated 13.04.2017, stands vacated and the State Election Commission and its authorities are at liberty to proceed in the matter of conducting election for the upgraded Chapra Municipal Corporation. Since the previous notification dated 19.04.2017 has been affected due to the interim order dated 13.04.2017, the State Government shall issue fresh notification forthwith. However, the Court would like to clarify the position, that it is always open to the Government to add fresh areas to the Chapra



Municipal Corporation, after following the due procedure of law.
However, the same shall be without affecting the present election.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	AFR
U	

