

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5068 of 2021

1. Kumar Amitabh (male), aged about-40 years, son of Ajay Kumar Singh resident of Village and P.O. Amhara, P.S. Bihta, District- Patna.
2. Anand Kumar (male), aged about-56 years, son of Vinod Kumar, resident of Village and P.O. Amhara, P.S. Bihta, District- Patna.

... .. Petitioners

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, Patna Division, Patna.
4. The District Magistrate, Patna, District- Patna.
5. The Deputy Development Commissioner, Patna, District- Patna.
6. The District Panchayat Raj Officer, Patna, District- Patna.
7. The Sub- Divisional Officer, Danapur, District- Patna.
8. The Block Development Officer, Bihta, District- Patna.
9. The Circle Officer, Bihta, District- Patna.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.

For the Respondent/s : Mr. Abbas Haider, SC-6

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 24-12-2021

Heard the learned counsel for the petitioner,
Sri S. B. K. Manglam and the learned counsel
appearing for the Respondent-State, Md. Abbas
Haider (SC-6).



2. The present writ petition was though filed initially for quashing the recommendation made by the Respondents No. 8 and 9 for Constitution of Bihta Nagar Parishad as also for quashing the draft notification issued by the Respondent No. 2 dated 26.12.2020 published in the daily Hindi newspaper Dainik Jagran dated 27.12.2020 whereby and whereunder the State Government had invited objections against its intention of Constituting the Bihta Nagar Parishad, comprising of group of villages, as mentioned therein, but during the pendency of the present writ petition, the final notification has been issued by the State Government under Section 6 of the Bihar Municipal Act, 2007 vide memo dated 03.03.2021, under the signature of the Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna, whereby and whereunder Bihta Nagar Parishad has been constituted, hence, now, the same is also sought to be challenged in the present proceedings inasmuch as this Court, by an order dated



16.07.2021, had allowed the amendment petition filed by the petitioners seeking to challenge the said notification dated 03.03.2021.

3. The brief facts of the case, according to the petitioners, are that in the year 2008, the Block Development Officer, Bihta had submitted its recommendation to the District Magistrate, Patna for constitution of the Bihta Nagar Panchayat comprising of various villages namely, Bihta, Olhanpura, Sri Rampur, Patsa, Khedalpura, Amhara, Raghopur, Banwaripur, Bishambharpur, Gokhulpur Korhar and Mahadeopur Fulari, having a population of 37058, on the basis of 2011 census. The District Magistrate, Patna, had then forwarded the said recommendation of the Block Development Officer to the State Government vide letter dated 21.10.2008, whereafter Urban Development and Housing Department had come out with a notification under Section 6 of the Bihar Municipal Act, 2007, constituting the Bihta Nagar Parishad, which was challenged before this Court in CWJC No. 14585 of 2009 and this Court, by an



order dated 14.2.2011, had set aside the said notification of the State Government dated 20.5.2009 on the ground that the statutory requirements of Section 4 of the Bihar Municipal Act, 2007 had not been complied with and the final notification did not mention as to whether objections were received or were not received and in case the same were received, whether the same had been considered.

4. It is the further case of the petitioners that subsequently, the State Government came out with a notification dated 12.5.2020 whereby and whereunder Section 3 of the Bihar Municipal Act, 2007 has been amended and it has now been provided that total population of main cultivator workers and marginal cultivator workers shall be below 50% of total population of workers in such area in all cases, hence, it is submitted that the requirement of existence of more than 75% non-agricultural population has been completely done away with, as far as declaring an area to be a



municipal area is concerned.

5. It has further been submitted on behalf of the petitioner that the Respondent No. 8 had submitted a report to the Respondent No. 4 i.e. the District Magistrate, Patna for constituting Bihta Nagar Parishad, comprising of the aforesaid villages, falling under four Gram Panchayats, namely, Srirampur, Bihta, Raghapur and Amhara, whereafter a public notice was published in the daily Hindi newspaper Dainik Jagran on 27.12.2020 and objections were invited, to which the petitioners had also submitted objections regarding the draft publication whereby Bihta Nagar Parishad was proposed to be constituted with the population residing in 11 different revenue villages, namely, (i) Bihta (ii) Raghapur (iii) Alhanpura (iv) Banwaripur (v) Shrirampur (vi) Bishambharpur (vii) Patsa (viii) Gokhulpur-Korhar (ix) Khedalpura (x) Mahadeopur Fulari and (xi) Amhara. Nonetheless, the final notification under Section 6 of the Bihar Municipal Act, 2007 was published vide memo no. 960 dated 03.03.2021 whereby and whereunder



Bihta Nagar Parishad has been constituted and the provisions of the Bihar Municipal Act has been applied to the area covered by the notification and the population residing therein.

6. The learned counsel for the petitioners has submitted that though the petitioners had filed detailed representation / objections to the draft notification dated 26.12.2020, however, a bare perusal of the final notification dated 03.03.2021, issued under Section 6 of the Bihar Municipal Act, 2007, would show that there is no consideration of the objections, hence, the impugned notification suffers from non-compliance of the provisions contained in Section 5 of the Bihar Municipal Act, 2007, thus, the final notification dated 03.03.2021 is fit to be set aside. In this regard, the learned counsel for the petitioners has referred to a judgment rendered by the Hon'ble Apex Court in the case of *M/s Kranti Asso. Pvt. Ltd. & Anr. vs. Masood Ahmed Khan & Ors.*, reported in (2010) 9 SCC 496.



7. The learned counsel for the Respondent-State, Md. Abbas Haider (SC-6), has submitted that the Governor of Bihar in exercise of power conferred under Article 213 (1) of the Constitution of India was pleased to promulgate the Bihar Municipal (Amendment) Ordinance, 2020 on 12.05.2020 [subsequently, the Bihar Municipal (Amendment) Ordinance, 2020 has been enacted and notified on 10.08.2020] whereby and whereunder Section 3 of the Bihar Municipal Act, 2007 was also amended and second proviso of Sub-Section (i) of Section 3 was substituted as follows:- "Provided further that the total population of main cultivator workers and marginal cultivator workers shall be below 50% of total population of workers in such areas in all cases". It is submitted that immediately after the aforesaid amendment, the Secretary, Urban Development and Housing Department, Government of Bihar, vide memo dated 14.05.2020, informed all the District Magistrates of the State of Bihar and requested them to send proposals for constituting new municipal bodies or



up-grading the existing ones under their respective districts in light of the aforesaid amendment in Section 3 of the Bihar Municipal Act, 2007. Subsequently, the District Magistrates were again requested to submit proposals for reconstitution of the urban local bodies and up-gradation of the old local bodies. Thereafter, proposals were received from various District Magistrates including that of Patna and then the Urban Development and Housing Department, Government of Bihar, came out with various notifications including the one with which are concerned i.e. the one dated 26.12.2020, declaring the intention to constitute new urban local bodies and up-grading the old local bodies.

8. It is further submitted by the learned counsel for the Respondent-State that a joint report dated 19.12.2020 had also been submitted by the Block Statistical Officer, Bihta, the Circle Officer, Bihta and the Block Development Officer, Bihta along with the map and related data to show that the constitution of different mauzas for the Bihta Nagar



Parishad was being done in view of the increasing urbanization of different panchayats and for the purposes of their proper development. Thus it is submitted that local inquiry of the area was duly made before the recommendations were made. It is also submitted that after the public notice dated 26.12.2020 was published in the daily newspaper on 27.12.2020, objections had been received, which were considered in light of the guidelines as fixed by the State Government vide letter dated 20.05.2020.

9. The learned counsel for the Respondent-State has also submitted that the population of the proposed Nagar Parishad was assessed to be 47,549, as per the latest census, out of which, the population of total workers is 13638 and the population of main cultivator workers is 1054 whereas the population of marginal cultivator workers is 324, hence, the percentage of total cultivators out of total workers is 10.10%, thus, the requirement of law stands fulfilled.



10. The learned counsel for the Respondent-State has further submitted that objections received in connection with Constitution of Bihta Nagar Parishad were inquired into by a three Member Committee, consisting of S.D.O., Danapur, C.O., Bihta and B.D.O., Bihta, who had submitted their detailed report vide letter dated 30.01.2021 to the District Planning Officer, Patna. Thereafter, the District Magistrate, Patna vide letter dated 02.02.2021, addressed to the Principal Secretary, Urban Development and Housing Department, had informed regarding disposal of the objections and had recommended for final publication of the notification for constitution of Bihta Nagar Parishad, whereafter the impugned notification dated 03.03.2021 has been issued whereby and whereunder Bihta Nagar Parishad has been constituted.

11. I have heard the learned counsel for the parties and perused the materials on record. Apparently, the only issue raised by the learned counsel for the petitioners to assail the impugned



notification dated 03.03.2021, issued under the signature of the Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna is that a bare perusal of the said notification dated 03.03.2021 would show that there is no consideration of the objections, hence, the impugned notification suffers from non-compliance of the provisions contained in Section 5 of the Bihar Municipal Act, 2007. At this juncture, it would be relevant to reproduce herein below Section 5 of the Bihar Municipal Act, 2007:-

“5. Consideration of Objection- Any inhabitant of the city, town or Nagar Panchayat in respect of which a notification has been published under Section 4 may, object to anything contained in the notification and submit his objection in writing to the State Government within one month from the date of its publication, the State Government shall take such objection into consideration.”

12. This Court, in order to ascertain as to whether



there has been consideration of the objections by the State Government, had deemed it fit and proper to call for the records, pertaining to the case in hand from the office of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna vide order dated 10.8.2021, pursuant whereof, the learned Standing Counsel no. 6, Md. Abbas Haider, has made available the concerned file. This Court has perused the records and finds that after receipt of various objections, in pursuance to the draft notification dated 26.12.2020, leading to publication of public notice in the daily newspaper on 27.12.2020, calling for objections, the same were considered by a high level team and a joint inquiry report dated 30.01.2021 was submitted under the signature of Circle Officer, Masaurhi, Block Development Officer, Masaurhi, Executive Officer, Masaurhi, Nagar Parishad, Masaurhi and the Sub-Divisional Officer, Masaurhi wherein all the objections have been dealt with. In fact inspection was also made and an inspection note was



prepared with regard to each and every objection and finally, it was found that the objections / claims were unfounded and fit to be rejected.

13. It also appears from the records that some other objections had also been received in the meantime, which were also dealt with and an inspection was held by the Block Agricultural Officer, Sampatchak, Circle Officer, Sampatchak and the Block Development Officer, Sampatchak, who, by their joint report dated 03.01.2021, had dealt with the objections in detail and had rejected the objections / claims of the objectors, finding the same to be unfounded. Similarly other objections have also been dealt with by various officials and have been found to be baseless and unfounded, which is apparent from the various reports submitted by the concerned officials, which form part of the records, as aforesaid.

This Court also finds from a perusal of the file in question that several reports have been submitted by the concerned officials, by which the



objections / claims have been considered and dealt with appropriately, however, the same were found to be without substance, thus have been rejected. It is needless to refer to each and every one of such reports.

14. It is also evident from the records that the District Magistrate, Patna, vide letter dated 02.02.2021, written to the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna, had submitted his detailed report regarding the objections received to the draft notification dated 26.12.2020 and his recommendation in light of the enquiry reports received from host of concerned officials. It is also apparent from the aforesaid letter of the District Magistrate, Patna dated 02.02.2021 that all the objections have been duly considered, inquiry reports have been obtained thereon and thereafter, the District Magistrate, Patna has come to a conclusion that the final publication is required to be made as per the draft notification. This Court further finds from the records that the aforesaid



aspect of the matter has not only been considered up to the level of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna but also by the Departmental Minister, who has also endorsed the suggestion of the District Magistrate, as aforesaid, as also has recommended for final publication of the notification in question. Hence, this Court is satisfied that the objections / claims / representations to the draft notification dated 26.12.2020 have been duly considered by the State Government, thus, the contention of the learned counsel for the petitioners to the effect that the impugned notification dated 03.03.2021 suffers from non-compliance of the provisions contained in Section 5 of the Bihar Municipal Act, 2007 is baseless, unfounded and is accordingly, rejected. No other argument has been advanced for the purposes of impugning the final notification dated 03.03.2021.

15. This Court, at this juncture, deems it appropriate to reproduce Section 6 of the Bihar



Municipal Act, 2007 herein below:-

“6. Constitution of Municipal Area- On the expiry of one month from the date of publication of notification under Section 4 and after consideration of all or any of the objections which may be submitted, the State Government may, by notification, constitute such Large Urban area, city, town or transitional area or any specified part thereof as a municipal area under this Act.”

16. It is apparent from a bare reading of Sections 5 and 6 of the Bihar Municipal Act, 2007 that it is not mandatory for the State Government to dispose of the objections / claims / suggestions to the draft notification issued by the State Government, which in the present case is the one dated 26.12.2020, by recording reasons thereon and the provisions contained in the Bihar Municipal Act, 2007 postulates mere consideration of the objections, which has definitely been done in the present case. It is a trite law that unless a Statute specifically provides for disposal of the objections / claims / representations, by recording reasons



thereon, it cannot be construed that such a requirement is inherent. In this connection it would be relevant to refer to the Judgements rendered by the Hon'ble Apex Court, reported in (1980) 1 SCC 403 (Sharif-Ud-Din vs. Abdul Gani Lone) and the one reported in (2009) 6 SCC 735 (Ram Deen Morya (Dr.) State of Uttar Pradesh). Consequently, this Court finds that the Judgement referred to by the Ld. Counsel for the petitioner, rendered in the case of M/s Kranti Asso. Pvt. Ltd. & Anr. (Supra) has no applicability in the facts and circumstances of the present case.

17. Therefore, this Court is of the opinion that once, the State Government has taken into consideration the objections / claims / representations filed against the draft notification issued by the State Government, as has also been stated in the impugned notification dated 03.03.2021, there is neither any impediment nor any illegality in issuing the final notification under Section 6 of the Bihar Municipal Act, 2007. Accordingly, this Court finds that the petitioners



have failed to satisfy this Court that the impugned notification, dated 03.03.2021 has been issued in violation of the provisions of the Bihar Municipal Act, 2007. Thus, this Court is convinced that the Respondent-State has fulfilled its statutory obligation and the final notification dated 03.03.2021 has been issued validly after due compliance of the provisions contained in the Bihar Municipal Act, 2007.

18. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	03.08.2021
Uploading Date	06.01.2022
Transmission Date	NA

