

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9878 of 2021

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1. Awadh Kishor Roy Son of Late Ram Anandi Ray Resident of Village-P.O. and P.S. Baruraj, District-Muzaffarpur, Presently Mukhiya of Gram Panchayat Raj, Baruraj East, Block-Motipur, District-Muzaffarpur.
 2. Gopal Sah Son of Late Mitilal Sah Resident of Village-P.O. and P.S. Baruraj, District-Muzaffarpur, Presently Mukhiya of Gram Panchayat Raj, Baruraj West, Block-Motipur, District-Muzaffarpur.
 3. Javed Ahmad Son of Late Abdul Latif, Resident of Village-Mehandi Nagar, Bankat, P.O. and P.S. Baruraj, District-Muzaffarpur.
 4. Ganesh Ram Son of Late Dhanpat Ram, Resident of Village-Baruraj, Tole-Kotiyar, P.O. and P.S. Baruraj, District-Muzaffarpur.

... .. 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 Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Tirhut Division, Muzaffarpur
5. The District Magistrate, Muzaffarpur District-Muzaffarpur.
6. The Block Development Officer, Motipur, District-Muzaffarpur.
7. The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel, Patna through the State Election Commissioner,

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Kumar Manglam
For the State	:	Mr.Rajiv Roy (Gpl)
For the S.E.C.	:	Mr. Amit Srivastava, Sr. Adv. Mr. Sanjeev Nikeseh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 24-09-2021



The petitioners have filed the present writ application for quashing the Notification No. 616, dated 18.02.2021, as contained in Annexure P-5, issued under the signature of respondent no. 3, the Joint Secretary, Urban Development and Housing Department, Government of Bihar, whereby the State Government has constituted Baruraj Nagar Panchayat with an area and population of the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West.

2. The petitioner nos. 1 and 2 are the Mukhiyas of Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West respectively; whereas the petitioner nos. 3 and 4 are the social workers having interest in the Gram Panchayats.

3. The relevant facts brought on record by the petitioners, in brief, is that the Gram Panchayat Raj Baruraj was in existence since pre-independence and subsequently was divided into two Gram Panchayats, namely, Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West, in the year 1978. The last Census in the country was conducted in the year 2011 and for the purpose of population under the Municipal Act, the published figure of 2011 Census only is available and according to the figure of 2011 Census, the total population of the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West is 27064



respectively and total workers in each of the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West is 7901. The total main workers in each of the two Gram Panchayats, i.e. Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West, is 5611.

4. Section 3 (1) of the Bihar Municipal Act, 2007 (hereinafter referred to as the '2007 Act'), confers powers upon the State Government for declaring its intention to constitute municipal area and it provides that the State Government may after making such enquiry as it deem fit and having regard to the population of any urban area and other factors mentioned under Section 3 of the 2007 Act, declares its intention to specify such area to be a larger urban area or medium urban area or a transitional area, provided that no such declaration shall be made unless the population, in the case of a transitional areas, i.e. small towns, is 12000 and more but not more than 40000, provided further that the non-agricultural population in such area should be 75% or more.

5. Accordingly, Section 3 of the 2007 Act provides for three classes of municipality, depending upon the population and other factors, the first is larger urban area, the second is the medium urban area and the third is the transitional area, called the



Nagar Panchayat. The present case is concerned with the transitional area, called as Nagar Panchayat. Proviso to Section 3 (1) was amended by Bihar Municipal Amendment Ordinance, 2020 (Bihar Ordinance 2 of 2020), in which it has been provided that the marginal workers shall be below 50 % of the total population of workers in such area in all cases. The word 'population' has been defined under Section 2 (74) of the 2007 Act, according to which "population" means the population as ascertained at the last preceding Census of which the relevant figures have been published.

6. The State Government published a draft notification, vide Notification No. 4250, dated 26.12.2020, whereby the State Government notified its intention to constitute Baruraj Nagar Panchayat with an area and population of Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West and objections were invited from the affected persons, as contemplated under Section 5 of the 2007 Act. The objections were filed by the residents of the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West, stating therein that 85 % of the population of the said two Gram Panchayats is still depended upon agriculture for the purposes of their survival and 70 % population of the 85 % are still surviving below poverty line, whose houses



have been provided under Indira Awas Yojana or Pradhanmantri Awas Yojana.

7. It has further been stated that the recommendation of the respondent no. 5 is only a table survey and the same is far away from the real truth on the spot. The said objections were filed before respondent no. 4. The further contention of the petitioners is that without any local enquiry, as contemplated under the 2007 Act, and without consulting the Gram Panchayats before the recommendation, as required under Section 11 (1) of the Bihar Panchayat Raj Act, 2006 (herein after referred to as the '2006 Act'), the State has come out with the impugned notification, dated 18.02.2021, whereby Baruraj Nagar Panchayat has been constituted with an area and population of Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West.

8. According to the petitioners, the total number of agricultural workers, residing in the two Gram Panchayats is more than 50 % of the total workers residing therein, as such, the State Government cannot declare the two Gram Panchayats as an urban area and on this count alone, the impugned notification cannot sustain. The petitioners further contend that the impugned notification issued by the State Government does not reflect the consideration of the objections raised by the petitioners/public at



large, pursuant to the draft notification and on this count also, the impugned notification cannot sustain.

9. Two set of counter affidavits have been filed on behalf of the State, the first is by respondent nos. 4 to 6, and the second is by respondent nos. 2 and 3.

10. In the counter affidavit, filed by respondent nos. 4 to 6, it has been stated that the Secretary, Urban Development and Housing Department, Government of Bihar, directed all the District Magistrates of Bihar to make proposal for constitution of the new urban local bodies and upgradation of old urban local bodies, vide letter no. 1713, dated 14.05.2020 (Annexure R-4/B) and in pursuance thereof, the District Magistrate, Muzaffarpur, directed all the Block Development Officers and the Circle Officers of the district of Muzaffarpur to make available the proposal for constitution of new town local bodies in the district of Muzaffarpur, through the concerned Sub Divisional Officer positively by 20.05.2020, vide his letter no. 681, dated 16.05.2020. In compliance of the aforesaid direction of the District Magistrate, Muzaffarpur, the Block Development Officer and the Circle Officer, Motipur, with the help of the officers of the block and the circle office, Motipur, prepared and filled up the required format (Prapatra) for declaration of Nagar Panchayat, under Section 6 of



the 2007 Act, having required information along with claim and objection report, signed by the Block Panchayat Raj Officer, Executive Officer and the Circle Officer, Motipur and the same was sent to the Sub Divisional Officer, West, Muzaffarpur, vide letter no. 1150, dated 20.05.2020 and letter no. 219, dated 30.01.2021. It is further stated that after considering the objections of the residents of the proposed Nagar Panchayat and after complying the relevant provisions of the 2007 Act, the State Government has issued the impugned notification.

11. In the counter affidavit filed by respondent nos. 2 and 3, it has been stated that after amendment of second proviso to Section 3 (1) of the 2007 Act by Bihar Municipal (Amendment) Ordinance, 2020, on 12.05.2020, the District Magistrate, Muzaffarpur, sought proposal from the Block Development Officers and the Circle Officers within the district of Muzaffarpur and in pursuance thereof, a joint proposal in prescribed format (Prapatra) was provided by the Block Development Officer and the Circle Officer, Motipur, with regard to Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West and the chart attached with the proposal clearly shows that the main cultivator workers and marginal cultivator workers is 26.71 % of the total population of workers.



12. In the meanwhile, the Bihar Municipal (Amendment) Act, 2020 has been notified on 10.08.2020. Accordingly, vide letter no. 4129, dated 13.12.2020, the Secretary, Urban Development and Housing Department, directed all the District Magistrates to send the amended proposal for constitution of new urban local bodies and upgradation of old urban local bodies, as during the review of the proposal sent from all the districts, it was thought appropriate to issue guidelines containing various points and especially need for constitution of Committee under the chairmanship of the District Magistrate to review the amended proposal (Annexure R-2/H). The District Magistrate, Muzaffarpur, vide letter no. 2108, dated 20.12.2020, forwarded the proposal relating to upgradation of the Nagar Panchayat within its district, including Baruraj Nagar Panchayat. Accordingly, the draft notification no. 4250, dated 26.12.2020, was issued by the State Government, in exercise of power under Sections 3 (1), 4, 5, 6 and 8 of the 2007 Act, declaring its intention to constitute Baruraj Nagar Panchayat, for which objections/suggestions were invited to be considered under Section 5 of the 2007 Act.

13. In consequence thereof, the local authorities received objections/suggestions with regard to the constitution of Baruraj Nagar Panchayat and the same were dealt with by the committee



comprising the Sub Divisional Officer, West Muzaffarpur, the Deputy Collector land Reforms, West Muzaffarpur, and the Additional Sub Divisional Officer, West Muzaffarpur, which was followed by the report, vide letter no. 222, dated 01.02.2021 by the Sub Divisional Officer, West Muzaffarpur to the District General Section, Muzaffarpur.

14. After receipt of the report of the Sub Divisional Officer, West Muzaffarpur, the committee comprising, amongst other, the Additional Collector, Muzaffarpur and the District Panchayat Raj Officer, Muzaffarpur, reviewed the said report and three objections raised with regard to Baruraj Nagar Panchayat were dealt with and were rejected. The District Magistrate, Muzaffarpur, vide letter no. 208, dated 03.02.2021, forwarded the proposals/records of the Block level and Sub Divisional level Committees, along with the proceedings of the District Level Committee. Thereafter, the Department, after thorough consideration of the objections received and the response/report submitted by the local authorities, having been satisfied with the reports, issued the impugned notification.

15. Mr. S. B. K. Manglam, learned Counsel for the petitioners, argued that Baruraj Nagar Panchayat has been constituted by upgrading Gram Panchayat Raj Baruraj East and



Gram Panchayat Raj Baruraj West, in complete violation of Article 242 Q (2) of the Constitution of India read with Sections 3 (1), 4, 5 and 6 of the 2007 Act.

16. Learned Counsel for the petitioners further submits that the total main workers residing in the two Gram Panchayats is 5611 each, as against the total number of workers residing therein to be 7901 in each Gram Panchayats and the total main workers in both the Gram Panchayats is much more than 50 % of the total workers. Despite the fact that the total population of main cultivator workers and marginal cultivator workers is more than 50 % of the total population of workers in the area, the respondent-State has issued the impugned notification, constituting Baruraj Nagar Panchayat, in violation of Section 3 (1) of the Bihar Municipal (Amendment) Ordinance, 2020 and that too, without consideration of all objections raised by the general public/residents. He further submits that from perusal of the impugned notification, it would be evident that no reasons have been assigned for rejecting the objections filed by the petitioners/residents and as such, it cannot be supplemented by any affidavit filed subsequently by the respondents. Reliance in this regard has been placed, in the case of **Mohinder Singh Gill and**



Another v. The Chief Election Commissioner, New Delhi and Others (AIR 1978 SC 851).

17. Learned Counsel for the petitioners further submits that it is the statutory obligation upon the State Government to consider the objections, but instead of the objections to be considered and decided by the State Government, the State Government called for a report from the District Magistrate and other local authorities and acted upon the same without application of independent mind. He further submits that it is a trite law that if a Statute vests certain power to the authority in a particular manner, then the said authority has to exercise it only in the manner provided in the Statute itself and not otherwise. In support of his argument, he has placed reliance on **Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala and Others**, reported in **(2002) 1 SCC 633**.

18. Learned Counsel for the petitioners next submits that the impugned notification is bad on account of non-compliance of Section 11 of the 2006 Act, inasmuch as before declaring the two Gram Panchayats as the Nagar Panchayat, the said Gram Panchayats have not been consulted, as mandatorily required under the 2006 Act.



19. Learned Counsel for the petitioners further submits that the Block Level Committee and the District Level Committee, constituted for consideration of suggestion/recommendation, prepared and submitted a table report without holding any actual survey of the area, as such, based upon the said reports, which is unworthy of reliance having incorrect figure, the constitution of Baruraj Nagar Panchayat would become unsustainable in law as well as on facts.

20. Learned Counsel for the petitioners referred to Annexure-P/2 to the writ application to contend that from perusal of the 2011 Census, regarding the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West, it would be evident that total population of the two Gram Panchayats is 27064 each, which comes to 54128 and likewise the total population of the workers of the two Gram Panchayats is 7901 each, and if added, becomes 15802 and the total population of the main workers is 11222 of the two Gram Panchayats, which have been included in the newly created Baruraj Nagar Panchayat. Thus, the total population of main cultivator workers and marginal cultivator workers will come to more than 50 % of the total population of workers in the two Gram Panchayats, which would also be supported by the format (Prapatra) prepared as per the joint report



submitted by the Block Development Officer and the Circle Officer, Motipur, annexed in the counter affidavit filed by respondent nos. 4 to 6 and at page 57 thereof, at serial nos. 8, 9 and 10, particularly at serial no. 10, the total population of the main cultivator workers and marginal cultivator workers is 50 % of the total population of workers, which is contrary to the provisions of the 2007 Act inasmuch as it should be less than 50 %.

21. Learned Counsel for the petitioners further submits that the two Gram Panchayats are purely rural areas and there is small *hat* (market) of not more than 50 shops near the Police Station and for that too, the two Gram Panchayats cannot be declared as Nagar Panchayat. He relies on the case of **Dr. Anand Kumar v. The State of Bihar and Others**, reported in **2011 (2) PLJR 423**.

22. On the other hand, Mr. Rajiv Roy, learned Counsel appearing on behalf of the State, submits that from perusal of the draft notification (Annexure P-3 to the writ application), it is clear that the objectors were instructed to submit their objections through the Divisional Commissioner/District Magistrate, which would be considered under Section 5 of the 2007 Act and in pursuance thereof, the objections were filed through the



Commissioner, Tirhut Division, Muzaffarpur. He next submits that in response to the letter no. 681, dated 16.05.2020 of the District Magistrate, Muzaffarpur, a joint proposal, vide letter no. 1150, dated 20.05.2020, in prescribed format (prapatra) was provided by the Block Development Officer and the Circle Officer, Motipur, with regard to Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West and the chart attached with the said proposal clearly shows that the population of main cultivator workers and the marginal cultivator workers to the total population of workers is 26.71 %.

23. He further submits that after the enactment of Bihar Municipal (Amendment) Act, 2020, notified on 10.08.2020, the District Magistrate, Muzaffarpur, vide letter no. 2108, dated 20.12.2020 forwarded the proposal relating to upgradation of the Nagar Panchayat within its district, which included Baruraj Nagar Panchayat. Thereafter, the Department came out with the draft notification no. 4250, dated 26.12.2020, declaring its intention to constitute Baruraj Nagar Panchayat and objections/suggestions were invited. He further submits that the objections/suggestions were submitted through the local authorities, which were duly considered factually by the Sub-Divisional Level Committee comprising Sub Divisional Officer, West Muzaffarpur and the



Deputy Collector land Reforms, West Muzaffarpur, and after examining the facts and figure thoroughly, report/suggestion was forwarded by letter no. 222, dated 01.02.2021 by the Sub Divisional Officer, West Muzaffarpur to the District General Section, Muzaffarpur.

24. He next submits that the committee, comprising the Additional Collector, Muzaffarpur and the District Panchayat Raj Officer, Muzaffarpur, reviewed the report of the Sub-Divisional Level Committee. The District Magistrate, Muzaffarpur, vide letter no. 208, dated 03.02.2021, forwarded the relevant records of the Block Level Committee and Sub Divisional Level Committee, as well as proceedings of the District Level Committee to the Principal Secretary, Urban Development and Housing Department, Government of Bihar and the State, after thorough consideration of the objections received and the response/report submitted by the committees, constituted at different level (Block Level, Sub Divisional Level and District Level), and having been satisfied with the report, after consideration upon the objections, issued the impugned notification. He placed Annexure R-2/F-3, the data of 2011 Census, in order to show that in the revenue village Baruraj, the total population of the workers, as per 2011 Census, is 7901, and the percentage of the main cultivator workers (1781) and the



marginal cultivator workers (329) to the total population of workers comes to 26.71 %, which is below 50 %. He relies upon the judgment of this Court, in the case of **Dinesh Kumar Himanshu and Others v. The State of Bihar and Others**, reported in **2014 (2) PLJR 640**, in support of his argument.

25. Mr. Amit Srivastava, learned Senior Counsel appearing on behalf of the Bihar State Election Commission, submits that the contention of the petitioners that the population of workers in Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West is 7901 + 7901 (total 15802) and the total main cultivator workers is 5611 + 5611 (total 11222) out of the total population of the two Gram Panchayats, 27064 + 27064 (total 54128), is totally misconceived inasmuch as, according to learned Senior Counsel, the two figures mentioned above cannot be added because the village census code of Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West is same, i.e. 228164, and the population mentioned in Annexure P-2 reflects the total population of village Baruraj, including the total workers and total main cultivator workers and the same are not required to be added again as the population of Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West inasmuch as the total population of village Baruraj has been given in Annexure P-2. By



way of illustration, he referred to the village code of Gram Panchayat Raj Bariyarpur East, Gram Panchayat Raj Bariyarpur West, Gram Panchayat Raj Bariyarpur North and Gram Panchayat Raj Bariyarpur South, and submits that village census code of all the four Gram Panchayats are same and the population mentioned is also the same.

26. I have heard learned Counsel for the parties and have carefully gone through the materials available on record.

27. The main contention of learned Counsel for the petitioners is that the population of the main cultivator workers and the marginal cultivator workers of the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West is not less than 50 % of the total population of workers in the area, as per 2011 Census and further the objections filed by the petitioners and others were not considered by the State Government inasmuch as no reason for rejection of the objections has been assigned in the impugned notification.

28. From the format (Prapatra) submitted by the local authorities, based upon the 2011 Census and Annexure R-2/F-3 to the counter affidavit filed by respondent nos. 2 and 3, which is the census data from the District Census Handbook of 2011, it appears that as per the 2011 Census, the population of total workers is



7901, out of which the population of main cultivator workers is 1781 and the population of marginal cultivator workers is 329, as such the percentage of main cultivator workers and the marginal cultivator workers to the total population of workers comes to 26.71 %, which is less than 50 %, as required under the amended proviso to Section 3 (1) of the 2007 Act.

29. It is further evident from the records that before publication of draft notification, a proposal from the District Magistrate, based upon the various parameters, including the population, was sought by the State Government and upon being satisfied about the factual data furnished by the District Magistrate, through the local authorities, the State Government published the draft notification, dated 26.12.2020, in exercise of its power under Section 3 of the 2007 Act, declaring its intention to constitute Baruraj Nagar Panchayat.

30. The objections, which were filed, were considered at the Block Level, Sub Divisional Level and District Level and from perusal of the reports of the Committees, it appears that the Committees, at different level, have factually examined the relevant data having regard to the population, density of population, non-agricultural activities in such area and such other factors, as per the law and came to the finding that in Baruraj,



Police Station, petrol pump, gas agency and saw mill are situated and further three State Highways, i.e. Motipur-Sahebganj Highway, Motipur-Saraiya Highway and Motipur-Deoriya Highway, are passing through it.

31. The Committees have also found that in village Baruraj, only 26.71 % population are involved in the agricultural work and accordingly the contention raised by the objectors that 85 % of the population is engaged in the agricultural work, has been rejected. Accordingly, the Committees, upon thorough consideration of the objections, suggested that keeping in view all the economic activities and urbanization and in order to prevent the uncontrolled development, the area may be upgraded as Nagar Panchayat in order to have the proper development of the area and to increase public utility facilities. As such, the contention of the petitioners that population of the main cultivator workers and the marginal cultivator workers is more than 50 % of the total population of workers is not supported by the 2011 Census and is, accordingly, rejected.

32. From the facts and figures provided by the Committees, at different level, it appears to this Court that the area in question is developing in terms of various economic and other activities and the conversion of the area from Gram Panchayat to



Nagar Panchayat will ensure the sustained development of the area and will improve the standard of living of the local population and the benefits that will flow to a Nagar Panchayat will be greater than that of the benefits available to a Gram Panchayat. Therefore, in the opinion of this Court, the decision to upgrade the Gram Panchayats in question to Nagar Panchayat will be in larger public interest.

33. Insofar as the contention of learned Counsel for the petitioners that the objections filed by the petitioners and others have not been considered by the State Government before issuance of the impugned notification, dated 18.02.2021, constituting Baruraj Nagar Panchayat and further from perusal of the impugned notification, it is apparent that no reason has been assigned for rejecting the objections of the petitioners and others, it appears from the materials brought on record by the State respondents that objections filed by the petitioners and others have been duly verified factually by the Committees constituted at the direction of the State Government at different levels, i.e. Block Level, Sub Divisional Level and District Level and a detailed report on factual aspect including the population of the main workers were made available to the State Government by its officials. The objections filed by the petitioners were already available with the State



Government and the State Government having been satisfied with the report and after consideration upon the objections, issued the impugned notification. The consideration of the objections filed by the petitioners by the State Government is very much evident from the impugned notification itself.

34. From perusal of Section 6 of the 2007 Act, it appears that the State Government is required to take into account the objection(s) filed by the inhabitant(s) and no duty is cast upon the State Government under Section 6 of the 2007 Act to dispose the objection/suggestion after recording reason thereof. There is no such provision under the Statute, which required the State Government to dispose the objections giving reasons thereof, as such, the same cannot be construed by interpreting Section 6 of the 2007 Act. The impugned notification, as pointed out herein above, clearly records that the State Government took into consideration the objections and in the counter affidavits filed by the State, it has specifically been mentioned that the objections/suggestions were considered by the State Government before issuing the notification under Section 6 of the 2007 Act and further the objections of the petitioners were basically with regard to the population of the main workers based upon the 2011 Census, which I have already examined and have come to the conclusion that the population of



the main cultivator and marginal cultivator workers, as per 2011 Census, is less than 50 %, i.e. 26.71 %, which is in conformity with the provisions of the Bihar Municipal (Amendment) Act, 2020.

35. The upgradation of a Gram Panchayat into a Nagar Panchayat is an exercise which is taken for the benefits of the people/inhabitants of the area in terms of sustained development, better public utility services and to prevent the haphazard growth of various activities in the area. The Writ Court, in such matter of executive policy done in the exercise of statutory power, should not interfere with it lightly until and unless a strong case is made thereof. In this regard, this Court is tempted to quote paragraphs 15, 16 and 17 of **Dinesh Kumar Himanshu** (supra), which read thus:

“15. The next contention of Mr. Manglam is that the objection/suggestions filed by the petitioners and others have not been considered before issuing the final notification constituting the Nagar Panchayat vide Annexure-10. At least it is not reflected from the said order that such objection filed under Section 5 of the Act was considered and rejected. In order to appreciate the aforesaid contention of the petitioner this Court would bear in mind two relevant aspects of the matter. Firstly, the objection as submitted by the petitioner no. 1 was



with respect to the vagueness of the survey report submitted through the respondent District Magistrate and, secondly, the relevant provisions contained in Section 5 of the Act (already noticed hereinabove). The objection filed by the petitioner that the sample survey report was wholly cryptic and there is no other material before the Government to record its satisfaction that the proposed area had changed its complexion and had become a transitional area (semi-urban area) has already been negated by this Court relying on materials already on record. In this context it may be noticed that although Section 5 provides for consideration of the objection to be filed by any inhabitant of the proposed area within one month from the date of publication of the notification under Section 4 but on reading Section 6 thereof it appears the State Government is only required to take into account those objections. There is no statutory duty cast on the State Government for disposal of those representations/objections after recording reasons therefor. Unless there is any such provision which required the State Government to dispose of such objection giving reasons therefor the same cannot be construed woven into the Act. The impugned notification (Annexure-10) clearly records that the State Government took into consideration the objections before issuing the same. In the counter affidavit filed on behalf of the respondent State, it has clearly been stated that the objections/suggestions were considered by the



Government before issuing the notification under Section 6 of the Act. The Court in taking the aforesaid view is conscious of the fact that such notification(s) and constitution of municipal bodies are made/passed in larger public interest to meet the ever increasing aspirations of the citizens. Even otherwise, as noticed above, the objection of the petitioner was principally with respect to the sample survey report attached alongwith the report of the District Magistrate depicting presence of required percentage of population of the inhabitants of the proposed area(s) dependant on non-agricultural occupation/activities. I have already noticed the survey report submitted by the District Magistrate and found the defects therein unworthy for its total rejection. In the report (Annexure-4) further relevant details showing eligibility of the area to be treated and declared as transitional area were also found and reported. Moreover, conversion of Panchayat (rural area) into Nagar Panchayat (semi-urban area) is a serious exercise which is taken for the betterment of the people (inhabitants) of the area. The Writ Court, in such matter of executive policy done in the exercise of statutory power, should not interfere with lightly until and unless a strong case is made therefor. This Court would rely in this regard on the relevant observations made by this Court in an order passed in CWJC No. 737 of 2010 (Pulendra Kumar Singh & Anr. vs. The State of Bihar & Ors.):-



"The decision to progress from a Panchayat to a Nagar Parishad is basically an executive matter. It is however regulated by statutory requirements. This conversion is nothing but only an indication of the development of the society matching the aspirations of the people who desire a better standard of living social, political and economic as the benefits that flow to a Nagar Parishad are better and for improved than that available to the Panchayat. A developing society is not static. Therefore, it is not each and every error in procedure that may necessarily call for interference by the writ court. Unless grave prejudice is shown to have been caused, the writ court shall not lightly to interfere. The conversion of the Panchayat to a Nagar Parishad is a serious exercise from public resources involving considerable man power, man-hours and public finances."

16. Before closing the case this Court would deal with the submission of the petitioners that the impugned notification is vitiated on account of non-compliance of Section 11 of the Act of 2006 for which reliance has been placed on an order of this Court passed in Case No. 677 of 2010. Firstly, no such pleadings in writ petition has been made and shown to the Court enabling the State respondents to place on record their response. Secondly, the order



passed by this Court in CWJC No. 677 of 2010 was in an entirely different factual background. Challenge in the said writ petition was to the Government notification dated 26.5.2009 whereby the State Government converted the Municipal Council to Municipal Corporation by adding some area(s) of the neighbouring Gram Panchayat in order to exceed population to two lacs and more. This Court noticed the proviso to Section 11 of the Act of 2006 to conclude that the same was not complied with although the relief was not granted only on the said count. Section 11(1) of the Act of 2006 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.”



17. It is, thus, seen that the District Magistrate is required to make a consultation with the Gram Panchayat and thereafter issue a notification either to include within or exclude from any Gram Panchayat Area any village or part thereof and alter the name of the Gram Panchayat. On a plain reading thereof it appears that such consultation and notification is required only when the District Magistrate proposes to include within or exclude from any Gram Panchayat Area any village or part thereof. This requirement in law is therefore for creation of a new Gram Panchayat effecting alteration in the area(s) of existing Gram Panchayat(s). This is not the case at hand. That apart, the Municipal Act itself provides for inclusion of such area to be declared as transitional area, urban area or larger urban area. No provision in the Municipal Act has been shown by the petitioners that before doing so any notification by the District Magistrate is required if part of the area constituting a Gram Panchayat is required to be notified as transitional area. Furthermore, the Court in the said case in view of specific provisions contained in Section 8 of the Municipal Act found that the view of the Municipal Council (Municipality) was not obtained before declaring by addition of certain area(s) as Municipal Corporation. The contention of the petitioners is, therefore, not held sustainable in law.”



36. Accordingly, the contention of the petitioners with regard to non-consideration of the objections is fit to be rejected.

37. The further contention of the petitioners with regard to non-compliance of Section 11 of the 2006 Act is concerned, the same is also not tenable inasmuch as Section 11 (1) of the 2006 Act reads as follows:

“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.”

38. From perusal of the aforesaid Section 11 (1) of the 2006 Act, it is very much clear that the District Magistrate is required to make consultation with the Gram Panchayat and



thereafter issue a notification either to include within or exclude from any Gram Panchayat any village or part thereof and alter the name of the Gram Panchayat and upon plain reading thereof, it appears that such consultation and notification is required only when the District Magistrate proposes to include within or exclude from any Gram Panchayat any village or part thereof, which is not the case of the petitioners in the present writ application. Section 11 (1) of the 2006 Act deals with creation of a new Gram Panchayat effecting alteration in the areas of existing Gram Panchayat. The petitioners have failed to show any such provision in the 2007 Act that before issuance of final notification upgrading a Gram Panchayat into a Nagar Panchayat, the respondents-State is required to consult the Gram Panchayat before declaring the same as Nagar Panchayat. This contention of the petitioners is also not tenable and is rejected.

39. In view of the discussion, on the fact as well as on law, I come to the conclusion that the petitioners have failed to satisfy this Court that the impugned notification, dated 18.02.2021, declaring the Gram Panchayat Raj Baruraj East and Gram Panchayat Raj Baruraj West as Baruraj Nagar Panchayat, has been issued in violation of the provisions of 2007 Act.



40. In the result, I find no merit in this writ application,
which is, accordingly, dismissed.

41. However, there shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	10-09-2021
Uploading Date	24-09-2021
Transmission Date	N/A

