

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1868 of 2022

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1. Rinku Kumar Paswan, S/o Late Shankar Paswan, Ward No. 05, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 2. Yamuna Hazra, S/o Late Ganga Hazra, Ward No. 05, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 3. Ranjan Kumar, S/o Late Madan Sah, Ward No. 05, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 4. Om Prakash Sah, S/o Gorakh Sah, Ward No. 14, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 5. Manohar Raut, S/o Late Harihar Raut, Ward No. 05, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 6. Sudish Bhagat, S/o Late Ramashish Bhagat, Ward No. 11, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 7. Jan Mohammad, S/o Late Khalil Mian, Ward No. 01, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.
 8. Manoj Singh, S/o Late Phulena Singh, Ward No. 11, P.O.-Barwat Sena, P.S.-Bettiah Mufassil, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Depart., Government of Bihar, Patna.
4. The District Magistrate, West Champaran.
5. The Chief Municipal Officer, Bettiah, District-West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Harendra Kumar Tiwary, Advocate
For the Respondent/s : Mr. Kinkar Kumar (SC-9)
Ms. Deepika Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)



2 10-05-2022 In substance, the petitioner is aggrieved by inclusion of Wards No. 1 to 15 of Barwat Sena Gram Panchayat within the area of Bettiah Municipal Corporation notified by the State Government in exercise of powers conferred under Sections 3(1), 4, 6 and 8 of the Bihar Municipal Act, 2007 (for short 'the Act').

2. Precisely, it is the petitioners' case that the said Gram Panchayat does not fulfill the requisite criteria for inclusion in Bettiah Municipal Corporation and, therefore, the notification of the State Government constituting Bettiah Municipal Corporation is not legally sustainable.

3. In our considered opinion, the petitioners' case is squarely covered by this Court's decision in case of ***Usha Devi vs. The State of Bihar & Ors.*** reported in ***2022(1) PLJR 833*** wherein this aspect has been considered in following paragraphs:-

"21. Another aspect of the matter is that fulfillment of requisite factors under Sections 3 and 7 of the Act of 2007 has to be considered in relation to "such area". The expression "such area" has repeatedly been used in Section 3 of the Act of 2007 and refers to the "urban area", which was proposed to be constituted and to come into existence as a result of the process of constitution/ upgradation of Municipality/ Urban Area.

22. It is clear from these statutory provisions that the requisite population, density of



population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance and other requirements, contemplated under Sections 3 and 7 of the Act of 2007, are not requirements in respect of the rural area/individual panchayat/small municipal area, which are sought to be included for the purposes of upgradation or constitution of Municipal Area under the Act of 2007. The said requisites are to be satisfied in respect of the municipal area which has to come into existence as a result of the process undertaken for constitution of municipality in accordance with Chapter II of the Act of 2007.

23. Thus, in our opinion petitioners' case, that the requisite composition of non-agricultural population/workers are to be satisfied in respect of all the four individual Gram Panchayats, is misconceived and fallacious."

4. Submission has been advanced on behalf of the petitioners that against the proposal of the district administration to constitute Bettiah Municipal Corporation the petitioners had filed objections. However, without duly considering their objections the Bettiah Municipal Corporation has been notified.

5. The question of requirement of passing any order by the State Government on objections filed by the inhabitants of the concerned area under Section 5 of the Act has been considered by this Court in case of **Usha Devi** (supra) and it has been held in paragraphs 47 to 51 as under :-

"47. Having regard to the discretion given to the Governor under Article 243Q of the



Constitution of India, the notifications issued under Chapter II of the Act of 2007 cannot be considered to be discharge of administrative functions, much less adjudicatory in nature. Though the notifications under Sections 4 and 6 of the Act of 2007 are issued under Article 166 of the Constitution of India, but the same may be termed as legislative rather than administrative.

48. By no stretch of imagination, the exercise of declaration of intention or constitution of municipal area may be termed as adjudicatory function. Chapter II of the Act of 2007, therefore, consciously omits the requirement of disposing of the objections received in response to the notification issued under Section 4 of the Act of 2007. Chapter II of the Act of 2007 only provides an opportunity to the inhabitants of the city, town or Nagar Panchayat to submit their objection in writing to the State Government within one month from the date of publication of intention to constitute a municipal area. The Act of 2007, therefore, requires the State Government to take such objection into consideration; and consciously omits any prescription for disposal of the objections or passing of orders thereupon.

49. The notifications issued under Chapter II of the Act of 2007 are issued in exercise of functions which partakes legislative character though issued under Article 166 of the Constitution of India.

50. In this connection, this Court would take into consideration decision of the Apex Court in the case of ***Sundarjas Kanyalal Bhatija & Others -Versus- Collector, Thane, Maharashtra & Others***, reported in ***(1989) 3 Supreme Court Cases 396***. The relevant paragraphs are being reproduced:

“27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right



in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3 (2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even “its juster will for theirs”.

28. Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law.”

51. Likewise, in the instant case, the notifications issued by the Governor in exercise of powers under Chapter II of the Act, having its roots in Article 243Q (2) of the Constitution of India cannot be subjected to judicial review applying the principles of natural justice, requiring the passing of reasoned orders upon objections received in response to notification issued under Section 4 of the Act of 2007.”

6. In such view of the matter, the contention on behalf



of the petitioners that the impugned notification would require interference because of absence of any reasoned order on the objections filed by the petitioners is also not tenable.

7. Accordingly, we do not find any merit in this writ application, which is dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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