

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9333 of 2021

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1. Shamsheer Prasad Singh Son of Late Jwala Prasad Singh Resident of Village-Singhiya, Ward No.5, P.O. and P.S. Singhiya, District- Samastipur.
 2. Shashi Ranjan Singh Son of Late Nageshwar Singh Resident of Village-Singhiya, P.O. and P.S. Singhiya, District- Samastipur.

... .. 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 Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Samastipur, District- Samastipur.
5. The Sub-Divisional Officer, Rosera, District- Samastipur.
6. The Block Development Officer, Singhiya, District- Samastipur.
7. The Circle Officer, Singhiya, District- Samastipur.

... .. Respondents

Appearance :

For the Petitioners : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Respondents : Mr. Subhash Prasad Singh (GA-3)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 12-05-2022

The Urban Development and Housing Department,
Government of Bihar, through its notification dated
03.03.2021, issued under Section 6 of the Bihar Municipal Act,
2007 has constituted Singhiya *Nagar Panchayat* by including
Gram Panchayat Singhiya-I (part), Singhiya-II, and Singhiya-



III in the district of Samastipur, within its area. The said notification is under challenge in the present writ application filed under Article 226 of the Constitution of India by the petitioners who are residents of village Singhiya. It is the petitioners' case that the said notification does not fulfill the statutory requirement of the *proviso* to sub-section (1) of Section 11 of the Bihar Panchayat Raj Act, 2006 (Panchayat Raj Act, for brevity) read with the provisions contained under Article 243 Q(2) of the Constitution and Section 3(1) of the Bihar Municipal Act, 2007 (Municipal Act, for brevity).

2. It has been asserted in the writ petition that Section 3(1) of the Municipal Act empowers the State Government to declare its intention to constitute a municipal area, but after making such enquiry, as it may deem fit, having regard to the population of any urban area, density of population therein, the revenue generated for the local administration of such area, percentage of employment in non-agricultural activities in such area, the economic importance of such area, and other factors as may be prescribed. However, without conducting an enquiry, as contemplated under Section 3(1) of the Municipal Act, the State Government of Bihar asked the respective District Magistrates to send their proposal for



constitution of the urban bodies and, accordingly, the District Magistrate Samastipur sent a proposal for constitution of Singhiya Nagar Panchayat including within its area the aforesaid 3 Gram Panachayats, namely, Singhiya-I, Singhiya-II, and Singhiya-III. It is specific case in the writ petition that since there was no enquiry held, as stipulated under Section 3 (1) of the Municipal Act, before issuance of notification containing declaration of intention to constitute Singhiya Nagar Panchayat under Section 4 of the Municipal Act, the subsequent notification constituting Singhiya Nagar Panchayat under Section 6 of the Act is unsustainable.

3. It is also stated that availing the liberty under Section 5 of the Municipal Act to raise objection against proposed constitution of Singhiya Nagar Panchayat, an objection was filed by the petitioners and others on 22.01.2021 raising following issues:

(i) No enquiry was held, as stipulated under Section 3 (1) of the Minicipal Act, inasmuch as, no officer had ever visited the village Singhiya for the enquiry to ascertain whether the area and population residing therein do fulfill the requirements of its urbanization, as contemplated under Section 243 Q (2) of the Constitution of India.



(ii) Under Section 11 of the Panchayat Raj Act, power has been conferred upon the District Magistrate to alter the boundary of any *Gram Panchayat* for the purpose of inclusion or exclusion of certain area in and from the *Gram Panchayat* but after consultation with the *Gram Panchayat*, likely to be affected by such decision. However, before sending of the proposal by the District Magistrate for constitution of Singhiya *Nagar Panchayat*, none of the 3 *Gram Panchayats* were consulted by the District Magistrate.

(iii) The population residing in the area did not fulfill the requirement of the amended provision of the second *proviso* to Section 3 (1) of the Municipal Act.

4. It is stated in the writ petition that according to 2011 census, the total population of village Singhiya was 31,952. Total number of workers, out of the said total population is 9,371 out of which 1,810 is the population of farmers and 2475 is the population of agricultural labourers. The number of non-agricultural labourers is 1,025 only. It is accordingly the petitioners' case that total number of non-agricultural labourers, if deducted from total number of labourers in the village, total population of agricultural labourers will come to 8,346, which is more than 80 per cent of



the total population of labourers of the village. The petitioners have relied on information downloaded from the Google software which has been brought on record by way of Annexure P-4, to substantiate the statements made in paragraph 15 and 16 of the writ application in this context.

5. From the pleadings filed on behalf of the respondents, based on 2011 census, it appears that it is their case that total population of workers in the area is 9,371. The population of main cultivator workers is 1,810 and marginal cultivator workers, 415. It is accordingly the case of the respondents that the said data based on 2011 census satisfies the requirement of the second *proviso* to Section 3 (1) of the Municipal Act, which mandates that declaration of intention to notify an area as an urban area, i.e., total population of main cultivator workers and marginal cultivator workers must be below 50 per cent of the total population of workers in such area stands satisfied. The respondents have relied on the data based on 2011 census in the Counter affidavit. The said document brought on record by way of annexure to one of the counter affidavits has not been controverted by the petitioners.

6. In such view of the matter we do not find any merit in the contention on behalf of the petitioners that the



impugned action of the State Government violates the requirement under the second *proviso* to Section 3(1) of the Act.

7. Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioners has vehemently argued that there has been no enquiry as stipulated under Section 3 (1) of the Municipal Act. Similar submission made by him in case of Navin Kumar Vs. State of Bihar was rejected by an order dated 21.03.2022 passed in CWJC No. 6251 of 2021, paragraph 16 to 18 of which reads as under:-

“16. Mr. S.B.K. Manglam, learned counsel has referred to the provisions under Section 3 of the Municipal Act to contend that the said provision requires making of inquiry by the State Government having regard to the population of any urban area, the density of population therein, revenue generated for the local administration of such area, percentage of employment in non-agricultural activities in such area, the economic importance of such area, etc.. He has argued that Section 3 mandates such inquiry to be conducted by the State Government before issuance of a notification under the provisions of the Act for constitution of an urban area. He has further argued, with reference to the averments made in the writ application that before issuance of the impugned notifications, no officer had ever visited the area in question to conduct an inquiry as stipulated under Section 3(1) of the Act and, therefore, impugned notifications are legally unsustainable.

17. In view of the aforesaid submissions, we deem it proper to reproduce



Section 3 of the Bihar Municipal Act which reads as under :

***“Section 3 -
Declaration of intention to
constitute a municipal area***

(1) The State Government may, after making such inquiry as it may deem fit, and having regard to the population of any urban area, density of population there in, the revenue generated for the local administration of such area, the percentage of employment in non-agriculture activities in such area, the economic importance of such area, and such other factors as may be prescribed, by notification, declare its intention to specify such area to be a larger urban area, or a medium urban area, or a transitional area:

Provided that no such declaration shall be made unless the population

(a) in the case of a larger urban area, is two lacs or more,

(b) in the case of medium urban area, is forty thousand or more but is less than two lacs, and

(c) in the case of a transitional area, that is a small town, is twelve thousand and more but not more than forty thousand: Provided further that the non-agricultural population in all



cases shall be seventy five per cent or more.

Explanation.—

"Revenue generated for the local administration" shall not include-

(a) taxes, if any, distributed to the Municipality by the State Government,

(b) loans and grants from the State Government, and

(c) loans and grants from the Central Government or institution or other source.

(2) The State Government shall, by notification, declare an area specified as-

(i) a larger urban area to be a city,

(ii) a medium urban area to be a town, and

(iii) a small town or transitional area to be a Nagar Panchayat or urban growth centre

(3)Notwithstanding anything contained in sub-section (1), the State Government may, by notification, determine separate conditions, to constitute any hill area, pilgrim centre, tourist centre or mandi as a municipal area."

18. *In our view, it is manifest on a plain*



reading of Section 3 of the Act that the use of the expression 'may', 'for making such inquiry as it may deem fit', 'having regard to the population of any urban area, etc.' suggest that discretion lies with the State Government to declare its intention to specify such area to be a larger area or a medium urban area or a transitional area. The first and second proviso to sub-section (1) of Section 3 of the Act, as is evident from the language used are mandatory in character. The expressions 'may', and 'may deem fit' as falling in sub-section (1) of Section 3 disclose the legislative intent, which confers upon the State Government discretion in the matter of constitution of an urban area/municipal area. The authority of the State Government to constitute a municipal area is restricted, however, broadly by the two provisos attached to sub-section 1 of Section 3 of the Act and the provisions under Section 7 of the Act."

8. Mr. Manglam has submitted that there has been no compliance of the provision under Article 243 Q (2) of the Constitution of India, which is a condition precedent for constitution of a *Nagar Panchayat*. The said submission, in our opinion, is untenable for the reason the in conformity of the provisions of the Constitution of India as amended by the Constitution (Seventy-fourth) Amendment Act, 1992, the Bihar Municipal Act, 2007 has been enacted. The said issue stands answered by us in our decision rendered today (12.05.2022) in ***CWJC No. 6193 of 2021 (Birendra Prasad Yadav Vs. State of Bihar and Ors.)***. The relevant paragraphs 18 to 25 of the said



decision in case of ***Birendra Prasad Yadav*** (supra) specifically deal with the said question which are being reproduced hereinbelow:-

“18. This Court does not find any legal infirmity in these two letters so as to render them to be in any manner in conflict with 2007 Act or Article 243-Q of the Constitution.

19. Regarding the other submission of the petitioners' counsel that the requisite uniform parameters for classification and constitution of municipal area has not been specified by public notice and as such, the process of upgradation/constitution is violative of Article 243-Q(2) of the Constitution, this Court would observe that the submissions are not fit to be accepted.

20. Article 243-Q(2) vests discretion in the Governor to specify by public notifications the factors/parameters, based on which “a transitional area” “a smaller urban area” or “a larger urban area” may be upgraded or constituted. Such specification by public notifications as per the constitutional mandate is to be by the Governor having regard to the population, density of population, revenue general for local administration, percentage of employment in non-agricultural activities, economic importance or such other factors as he may deem fit. The various parameters enumerated in Article 243-Q(2) are not exhaustive, but are illustrative leaving discretion in the Governor as he may deem fit. The only prescription is that the parameters have to be uniform and must be specified by public notification for the purposes of this part, being constitution of municipal area.



21. *As noticed above, these parameters have already been laid down by the State Legislature in Section 3 and Section 7 of the 2007 Act as amended by the Amendment Act of 2020. It is not the petitioners' case that the process of upgradation/constitution of the two municipal areas in question are not based on the uniform fixed parameters specified by the 2007 Act. This Court in this context would refer to certain relevant paragraphs from the judgment of the Apex Court in the case of **Champa Lal**(supra), relied upon by the petitioners, which read as follows :*

“7. It is declared under Article 243-Q(2) that the expressions “a transitional area”, “a smaller urban area” and “a larger urban area” (hereinafter collectively referred to as “Areas”) would mean such areas as may be specified by the Governor by a public notification for the purpose of Part IX-A of the Constitution of India. Article 243-Q(2) further obligates the Governor to have due regard to the various factors mentioned therein before specifying the Areas i.e. population of the area, the density of the population, the revenue generated in the area for local administration, percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit.

8. It, therefore, appears from the scheme of Article 243-Q(2) that



the Governor is not free to notify “Areas” in his absolute discretion but is required to fix the parameters necessary to determine whether a particular AREA is a transitional area or a smaller urban area or a larger urban area with due regard to the factors mentioned above. It is implicit that such parameters must be uniform for the entire State. It is only after the determination of the parameters, various municipal bodies contemplated under Article 243-Q(1) could be constituted.

(emphasis ours)

9. In response to a specific query whether any notification contemplated under Article 243-Q(2) had been issued by the State of Rajasthan, Mr Guru Krishnakumar, learned Senior Counsel appearing for the State of Rajasthan, produced two Notifications dated 4-7-1995 and 30-4-2012. On a plain reading of both the notifications, it appears that these notifications had been issued in exercise of the statutory powers conferred on the State Government by two different enactments known as the Rajasthan Municipality Act, 1959 (since repealed) and the Rajasthan Municipalities Act, 2009. Apart from the declaration regarding the source of power for the issuance of these notifications to be authority conferred by the various



provisions of the abovementioned two enactments, it appears from the tenor and scheme of the notifications that these notifications purport to classify municipalities only on the basis of population. The various other parameters to which regard is required to be had under Article 243-Q(2) were not taken into consideration for the purpose of classification made under the abovementioned two notifications. Therefore, in our opinion, these two notifications cannot be treated as notifications contemplated under Article 243-Q(2).

22. *We have supplied emphasis by underscoring paragraph 8 in the quotation of relevant extracts from the judgment of the Apex Court in the case of **Champa Lal** (supra), as the same lays down as to what is substantial compliance with the constitutional requirement under Article 243-Q(2) of the Constitution.*

23. *Within the limits of constitutional discretion vested in the Governor under Article 243-Q(2) of the Constitution, this Court finds that the requisite parameters for determining whether an area is to be constituted/upgraded as a transitional area, a smaller urban area or a larger urban area, is clearly specified by the 2007 Act. Sections 3, 7 and 13, taken note of above, in clear and specific terms lay down the requisite parameters in furtherance of the constitutional mandate under Article 243-Q(2) of the Constitution. The constitutional requirement of requisite parameters, as per*



*the decision of the Supreme Court in the case of **Champa Lal** (supra), are therefore held to be satisfied by the above noted provisions of the 2007 Act.*

24. The petitioners have not raised any objection that the above noted parameters specified in the 2007 Act are not satisfied or fulfilled in respect of the two areas constituted as urban area, namely, Nagar Panchayat Jankinagar (Banmankhi) and Nagar Panchayat Rupouli.

*25. In view of the aforesaid discussions, considering the judgment of the Apex Court in the case of **Champa Lal** (supra), Article 243-Q(2) of the Constitution and the provisions contained in the 2007 Act, this Court would conclude that the process of upgradation/constitution has been done based on uniform specified parameters contained in 2007 Act, which have been enacted in furtherance of the constitutional objective under Article 243-Q, and which are in consonance with the requirement of public notice as per decision of the Supreme Court of India in the case of **Champa Lal**(supra); and which has never been assailed by the petitioners. The process of upgradation and consequent upgradation/constitution of Nagar Panchayat Jankinagar (Banmankhi) and Nagar Panchayat Rupouli therefore does not suffer from any constitutional/legal infirmity.”*

9. In view of the aforesaid discussion and the law laid down by a Division Bench of this Court in the case of **Usha Devi and Others vs. The State of Bihar and Others**, reported in **2022 (1) PLJR 833**, we do not find any merit in this application.



10. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree
Madhuresh Prasad, J:

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	26.04.2022
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