

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9421 of 2021

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Kari Choudhary, son of Ramchandra Choudhary, resident of Village- Ashrafchak, Panchayat- Simri, Post Office- Simri Bakhtiyarpur, Police Station- Bakhtiyarpur, District- Saharsa.

... .. 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 Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Koshi Division, Saharsa.
5. The District Magistrate, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Syed Masleh Uddin Ashraf, Advocate
For the Respondent/s	:	Mr. Kinker Kumar (SC-9) Mr. Zaki Haider, AC to SC-9 Ms. Deepika Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-03-2022

A notification dated 03.03.2021, issued by the State Government of Bihar under Section 6 of the Bihar Municipal Act, 2006(hereinafter referred to as 'the Act'), whereby Nagar Panchayat Simri Bakhtiyarpur has been upgraded to a Nagar Parishad by adding two Gram Panchayats, namely, Khamhauti and Simri, is under challenge in the present writ application. The



petitioner is resident of the Simri Gram Panchayat.

2. Before issuance of the impugned notification under Section 6 of the Act, a notification dated 26.12.2020 was issued by the Urban Development and Housing Department, Government of Bihar declaring its intention to constitute by upgrading the said Nagar Panchayat Simri Bakhtiyarpur to Nagar Parishad (Simri Bakhtiyarpur) including Simri within its area.

3. Objections were invited from the inhabitants of the area as required under Section 4 of the Act against the proposed upgradation of the Nagar Panchayat into Nagar Parishad. It was mentioned in the notification dated 26.12.2020 that those objections would be considered which were filed through Divisional Commissioner/ District Magistrate. The petitioner had filed an objection under Section 5 of the Act, copies of which have been brought on record by way of Annexure-3 to the writ application, before the Commissioner, Koshi Division, Saharsa and the District Magistrate, Saharsa. Thereafter, the impugned notification dated 03.03.2021 came to be issued by the Urban Development and Housing Department, Government of Bihar.

4. The petitioner has pleaded in the writ application that in both the revenue villages, namely, Simri and Ashrafchak under Gram Panchayat Simri the population of main marginal workers



was more than 50% of the total workers and, therefore, its proposed inclusion within the upgraded Nagar Parishad was against the guidelines issued by the Department. The petitioner relied on 2011 census in support of the nature of objection raised by him under Section 5 of the Act.

5. A counter affidavit has been filed on behalf of the State of Bihar stating specifically that the main cultivator and marginal cultivator workers in the upgraded Nagar Parishad is 24.36% of the total number of workers. It is the case of the State of Bihar, accordingly, that there is no violation of statutory requirement under the provisions of the Act including Sections 3(1) and 7 thereof. It has further been stated that the objections/ suggestions received under Section 5 of the Act were initially considered by a committee at the District level and the decision/ suggestion of the said committee was forwarded to the Department. The State Government after taking into consideration the objections/ suggestions has issued the impugned notification dated 03.03.2021.

6. Mr. Siya Ram Shahi, learned counsel appearing on behalf of the petitioner has vehemently argued that Section 5 of the Act requires consideration of objections submitted under the said provision by the State Government, whereas, in the present



case, objections were considered by a district level committee whereafter the State Government, without any application of mind, issued the impugned notification dated 03.03.2021. He has submitted that it was incumbent upon the State Government to have passed an order on the objection filed by the petitioner and others.

7. We have perused the joint objection filed by the petitioner and three other persons objecting to the proposal to upgrade the Nagar Panchayat to Nagar Parishad by including two villages, namely, Simri and Ashrafchak. It is evident from the pleadings in the writ petition as also the statement made in the said objection filed by the petitioner under Section 5 of the Act that it is the petitioner's case that total number of cultivator workers and marginal cultivator workers of the two villages, namely, Simri and Ashrafchak is more than 50% of the total population of workers in the said two villages and, therefore, inclusion of the said villages within the area of proposed Nagar Parishad is impermissible.

8. We are of definite opinion that the petitioner has failed to make out any case on the basis of pleadings on record as also in the light of the nature of objection raised under Section 5 of the Act to the effect that there was any violation of the statutory



requirement as available under second proviso to Section 3 (1) of the Act. The second proviso to Section 3 (1) of the Act reads as under :-

“Provided further that the total population of main cultivator workers and marginal cultivator workers shall be below fifty percent of total population of workers in such area in all cases.”

9. It is manifest from the records and submissions that the petitioner’s plea is based on the population of workers in the two villages, to assail the impugned notification, which, in our opinion, is fallacious on the face of it. This aspect has been elaborately dealt with by the Division Bench of this Court by order dated 17.01.2022 in CWJC No. 7446 of 2021 (***Usha Devi vs. The State of Bihar & Ors.***), paragraphs 21 to 23 of which read as under :-

“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."
(Underlined for emphasis)

10. The submission made on behalf of the petitioner that the respondents ought to have passed orders on the objection raised by him, in our opinion, is not sustainable at all in view of the nature of power which is exercised by the State Government in the matter of constitution of a municipal area under the provisions of the Act. This aspect has also been dealt with in case of **Usha Devi** (supra), paragraphs 47 to 52 of which read 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.

52. Once the objections are invited,



considered and notification issued, it is not for the constitutional Courts under Article 226 of the Constitution of India to sit in judgment over the decision leading to issuance of the notification upgrading or constituting a larger Municipal Area.

11. Considering the fact that the petitioner has not been able to make out any case of violation of any mandatory provision under the Act in upgradation of Nagar Panchayat Simri Bakhtiyarpur to Nagar Parishad, no interference is required by this Court with the impugned notification, in exercise of power under Article 226 of the Constitution of India.

12. We do not find any merit in this application, which is accordingly dismissed.

13. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	30.03.2022
Transmission Date	NA

