

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9414 of 2021

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Parwez Alam, son of Alauddin Azad, resident of village - Shekhi Chakia, P.O.
- Bara Chakia, P.S. - Chakia, District- East Champaran, Bihar- 845412.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Department of Urban Development and Housing Department, Government of Bihar, Patna.
3. The Joint Secretary, Department of Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, East Champaran, Motihari.
5. The Sub-Divisional Officer, Chakia, East Champaran.
6. The Sub-Divisional Public Grievance Redressal Officer, Chakia, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocates Ms. Shrishti Singh, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 20-05-2022

The petitioner has put to challenge, in the present writ application filed under Article 226 of the Constitution, a notification bearing No. 1003 dated 03.03.2021, issued by the Urban Development and Housing Department, Government of Bihar, whereby Nagar Panchayat Chakia has been upgraded to Nagar Parishad, in exercise of powers conferred under the



provisions of Sections 3(1)(a), 4, 5, 6 and 8 of Bihar Municipal Act, 2007 (for short 'the Act').

2. The petitioner claims to be resident of Nagar Panchayat Chakia. It appears from the pleadings on record that he has objection against inclusion of Wards No. 8, 9, 10, 11, 12 and 13 falling in EB No. 292 to 299 of Nagar Panchayat Chakia within the area of *Nagar Parishad*, Chakia. It is evident from the impugned notification issued under Section 6 of the Act that before issuance of the said notification, a declaration of the intention of the State Government to upgrade the *Nagar Panchayat* to *Nagar Parishad* was notified vide notification No. 4380 dated 26.12.2020. Section 5 of the Act enables the inhabitants of the area to be included within the urban local body proposed to be notified under Section 6 of the Act to make objections against such proposal.

3. It has been stated in the writ petition that objections were filed by so many inhabitants. It has been stated in paragraph 13 that one of the objections against upgradation of Nagar Panchayat Chakia to Nagar Parishad was that population of the wards in EB No. 292 to 299 consisted of around 55% of agricultural population. They also alleged *malafide* on the ground that village Bashaha Gaon nearer to the town was left



aside at the instance of the Chairman of the Nagar Panchayat, who held substantial properties in the said area. There are assertions that the petitioner had represented to the various functionaries of the State of Bihar against proposed upgradation of Chakia Nagar Panchayat into Nagar Parishad on various grounds including the ground that the same was being done without any proper enquiry and on mere suggestion of the Chairman of Nagar Parishad. It has been asserted that Wards No. 8 to 13 have been found to be agricultural area and an area located in close proximity to Chakia Nagar Panchayat, namely, Bashaha was left out which was objected to by the Mukhiya of the Gram Panchayat.

4. The impugned notification discloses that the objections filed by the inhabitants under Section 5 of the Act were taken into account before issuance of the impugned notification.

5. It has been stated in paragraphs 23 and 24 of the writ petition that in terms of the second proviso to Section 3(1) of the Act, for constitution of a municipality, the total population of main cultivator and marginal cultivator workers must be below 50% of the total population of workers in the area whereas in Wards No. 8 to 13 of Chakia Nagar Panchayat, total



agricultural population of the said area is more than 50%. It has further been stated that there is no material to demonstrate any compliance of the provision under Section 3(1) of the Act in relation to enquiry for taking a decision to constitute a Nagar Parishad.

6. Heard Mr. Ashish Giri, assisted by Ms. Shrishti Singh, learned Advocates for the petitioner and Mr. Kinkar Kumar, learned SC-9 representing the State of Bihar.

7. A counter affidavit has been filed on behalf of the State of Bihar stating therein that Section 3 of the Act was amended by Bihar Municipal (Amendment) Act, 2020 by substituting second proviso to Section 3(1) of the Act which requires that a declaration of intention to constitute a municipal area can be made under sub-section (1) of Section 3 of the Act only when the total population of main cultivator workers and marginal cultivator workers is below 50% of total population of workers in such area in all cases. Soon after the aforesaid amendment, the Secretary, Urban Development and Housing Department through its communications dated 14.05.2020, addressed to all the District Magistrates in the State of Bihar requested them to send proposals for constitution of new municipal bodies or upgradation of existing one, under their



respective districts.

8. Responding to the said communication, the District Magistrate, East Champaran at Motihari had made recommendation for upgradation of Nagar Panchayat Chakia as Nagar Parishad Chakia. The said recommendation was accompanied with the informations furnished in prescribed proforma disclosing necessary details including the details of number of main cultivator and marginal cultivator workers.

9. It is the case of the respondents-State that number of main cultivator workers and marginal cultivator workers, if taken together, is 2391, which is 23.71% of total number of workers. It has further been stated that the objections filed under Section 5 of the Act were considered and after having due regard to the said objections the State Government decided to issue the impugned notification dated 03.03.2021 upgrading Nagar Panchayat Chakia to Nagar Parishad Chakia.

10. Mr. Ashish Giri, learned counsel appearing on behalf of the petitioner has submitted that the impugned notification is unsustainable to the extent it includes Wards No. 8 to 13 within the limits of upgraded Nagar Parishad Chakia. He has submitted that the said notification does not justify inclusion of these wards within the area of Chakia Nagar Parishad as total



population of main cultivator workers and marginal cultivator workers in the said wards is more than 50% of the total workers. He has further submitted that the action of the respondents to exclude Bashaha village while constituting Chakia Nagar Parishad, which is in close proximity with the town, is tainted with *malafide*. He has placed reliance on Single Bench decisions of this Court rendered on 14.02.2011, in case of ***Dr. Anand Kumar vs. The State of Bihar & Ors.*** reported in ***2011 (2) PLJR 423*** and ***Neelam Devi vs. The State of Bihar & Ors.*** reported in ***2010(4) PLJR 583*** in support of his contention.

11. Relying on decision in case of ***Neelam Devi*** (supra) he has contended that a rural area must be allowed to continue as a rural area unless it is shown that non-agricultural population has increased therein to make it an urban area as defined under the second proviso to Section 3 of the Act. He has submitted that considering the demography of Wards No. 8 to 13 and the break up of agricultural *vis-a-vis* non-agricultural population, the same ought not to have been included in Chakia Nagar Parishad.

12. He has relied on the decision in case of ***Dr. Anand Kumar*** (supra) in support of his contention that if a statute provides a particular mode of performance, other modes of



performance are necessarily forbidden. According to him, since no enquiry, as stipulated under Section 3 of the Act, was conducted before inclusion of Wards No. 8 to 13 within the area of the notified Nagar Parishad Chakia, the said notification is unsustainable to the aforesaid extent at least.

13. Learned SC-9 representing the State of Bihar, on the other hand, has defended the validity of the impugned notification on the ground that the same has been issued in strict compliance of the statutory mandatory requirements under the provisions of the Act. He has submitted that the break up of main cultivator workers and marginal cultivator workers vis-a-vis the total population of workers of the entire area within the proposed Chakia Nagar Parishad has been taken into account before issuance of impugned notification under Section 6 of the Act. According to him, the stand taken on behalf of the petitioner that the population of main cultivator workers/ marginal cultivator workers and main workers of Wards No. 8 to 13 only for testing the correctness of the impugned notification is untenable.

14. We are inclined to accept the submission made on behalf of the State of Bihar in view of the Division Bench decision of this Court in case of *Usha Devi and others vs. The*



State of Bihar and others reported in **2022(1) PLJR 833**,
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.” (Emphasis added)

15. The submission made on behalf of the petitioner that the individual Wards No. 8 to 13 do not satisfy the requirement of the second proviso to Section 3(1) of the Act, is



irrelevant to entertain the petitioner's challenge to the impugned notification on the said ground. The plea of the petitioner that exclusion of a village nearer to the town from the purview of the impugned notification suggests *malafide* in exercise of statutory power is also not sustainable.

16. Section 3 of the Act confers upon the State Government discretion to declare in the matter of constitution of an urban/ municipal area. Dealing with Section 3 of the Act, a Division Bench of this Court in a decision rendered on 21.03.2022 in CWJC No. 6251 of 2021 (*Navin Kumar vs. The State of Bihar and others*) has held in paragraph 18 as under :-

“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.”

17. In case of **Usha Devi** (supra) this Court has held in paragraphs 47 to 52 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.”

18. Following the law laid down by this Court in case of **Usha Devi** (supra) and **Navin Kumar** (supra) with reference to various provisions under the Act, in our opinion, the impugned notification can not be said to be suffering from any legal infirmity warranting this Court’s interference, in exercise of power under Article 226 of the Constitution. The decision to



constitute a municipal area is a matter of policy of the State in accordance with the provisions under the Act. The nature of jurisdiction, which the State exercises while issuing a notification, has already been referred to hereinabove. Such decisions would invite interference only when it is demonstrated that the same is in breach of any statutory mandatory requirement applicable to constitution of a municipality.

19. For the reasons noted above, we do not find any merit in this application, which is accordingly dismissed.

20. No order as to costs.

(Chakradhari Sharan Singh, J)

I agree.
Madhuresh Prasad, J.

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
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