

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10996 of 2021

1. Mukesh Kumar Sah S/o Ramjeet Sah R/o Ward no. 6, Pipra Khas, P.s.- Mirganj, District- Gopalganj
2. Vijay Kumar Singh S/o Jagarnath Singh R/o Barwa Kaparpura, P.s.- Mirganj, District- Gopalganj
3. Kamleshwar Singh S/o Bijli Singh R/o Barwa Kaparpura, P.s.- Mirganj, District- Gopalganj
4. Shivji Singh S/o Ramapati Singh R/o Barwa Kaparpura, P.s.- Mirganj, District- Gopalganj
5. Jitendra Kumar Baitha S/o Paras Baitha, R/o Barwa Kaparpura, P.s.- Mirganj, District- Gopalganj
6. Dilshad Siddique S/o Md. Idrish Siddique R/o Barwa Kaparpura, P.s.- Mirganj, District- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through its Additional Chief Secretary, Panchayati Raj Department, Govt. of Bihar, Patna
2. The Director, Panchayati Raj Department, Govt. of Bihar, Patna
3. The District Magistrate, Gopalganj
4. The District Panchayat Raj Officer, Gopalganj
5. The Block Development Officer, Hathua, Gopalganj
6. The Commissioner, Saran at Chapra

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vishwajeet Kumar Mishra, Advocate
For the Respondent/s : Mr. Ajay, G.A.-5

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 28-02-2022 A notification dated 10.02.2021 issued by the State Government of Bihar under Section 6 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), whereby Barwa



Kaparpura *Panchayat* has been included within *Nagar Panchayat* Hathua, is under challenge in the present writ application.

Learned counsel appearing on behalf of the petitioner, assailing the impugned notification has submitted that the State of Bihar has failed to comply with the requirement of Section 5 of the Act, which requires consideration of objections filed by any inhabitant of the area in question. He submits that there is a general statement in the notification of consideration of objections raised by the inhabitants under Section 5 of the Act which is irregular and improper.

Learned counsel appearing on behalf of the State of Bihar has opposed the relief sought in the present writ petition.

The scope of consideration of objection has been discussed by a Division Bench of this Court in its decision rendered on 17.01.2022 in ***CWJC No. 7446 of 2021 (Usha Devi and Ors. Vs. State of Bihar and Ors.)***, paragraph 47-52 of which reads 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.”

(Underlined for emphasis)



Further another Division Bench decision rendered on 15.02.2022 in ***CWJC No. 11414 of 2021 (Kirti Azad Vs. State of Bihar and Ors.)*** following the decision in case of ***Usha Devi*** (supra) has refused to entertain the similar nature of relief as being sought in the present writ application.

For the aforesaid reason, we do not find any merit in this application, accordingly, this application is dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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