

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10659 of 2021

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Raj Kumar Prasad Son of Gaya Prasad Yadav Resident of Village-
Mastanganj, P.S.- Akbarpur, District- Nawada.

... .. Petitioner/s

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 Divisional Commissioner Magadh Division, Magadh.
5. The District Magistrate Nawada.
6. The Sub- Divisional Officer Rajauli, Nawada.
7. The Nagar Parishad Nawada Through its Executive Officer, Nawada.
8. The Gram Panchayat Raj Pharaha Through the Panchayat Secretary, Pharaha Panchayat, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Nikesh, Advocate
For the Respondent/s : Mr. S.P. Singh, G.A.- 3

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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 The petitioner is seeking quashing of notification dated 11.03.2021, whereby Pharaha *Gram Panchayat* has been included within the Nawada *Nagar Parishad*. The said notification has been brought on record by way of annexure-P/6 to the writ application.

Learned counsel appearing on behalf of the petitioner,



after some argument, concedes that this case is squarely covered by a Division Bench decision of this Court rendered on 17.01.2022 in ***CWJC No. 7446 of 2021 (Usha Devi and Ors. Vs. State of Bihar and Ors.)*** and another analogous case with reference to paragraphs 47-52. In view of the law discussed in case of ***Usha Devi*** (supra), paragraphs 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.”

In view of the above quoted Division Bench decision, the relief which the petitioner is seeking, cannot be granted. This writ application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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