

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10495 of 2021

1. Muuna Kumar Sah, Son of Asarfi Sah, Resident of Village-Bhitaha, Ward No.-9, P.S. Bairiya, District West Champaran.
2. Abhay Kumar Pathak, Son of Bashisth Mani Pathak, Resident of Khiriya Ghat, Subhash Chowk, P.S. Bairiya, District West Champaran.
3. Madan Kumar Prasad, Son of Nageshwar Prasad, Resident of Khiriya Ghat, Hat Saraiya Road, P.S. Bairiya, District West Champaran.
4. Anish Kumar, Son of Premchandra Prasad, Resident of Khiriya Ghat, Subhash Chowk, P.S. Bairiya, District West Champaran.
5. Manoj Prasad, Son of Late Ram Chandra Prasad, Resident of Khiriya Ghat, Subhash Chowk, P.S. Bairiya, District West Champaran.
6. Aditya Kumar Jaiswal, Son of Shatrughan Prasad Jaiswal, Resident of Khiriya Ghat, New Colony, P.S. Bairiya, District West Champaran.
7. Sudhanshu Kumar, Son of Munna Tiwari, Resident of Khiriya Ghat, Ward No. 4, P.S. Bairiya, District West Champaran.
8. Munna Kumar Gupta, Son of Late Yogendra Prasad, Resident of Khushi Tola, Khiriya Ghat, P.S. Bairiya, District West Champaran.
9. Mukesh Prasad, Son of Surendra Prasad, Resident of Khiriya Ghat, Ward No. 4, Subhash Chowk, P.S. Bairiya, District West Champaran.
10. Ravi Shankar Prasad, Son of Late Ram Chandra Prasad, Resident of Khiriya Ghat, Subhash Chowk, P.S. Bairiya, District West Champaran.
11. Dr. Vinay Mani Tiwari @ Dr. Vinay Kumar, Son of Kashi Mani Tiwari, Resident of Village-Pathori Ghat Khushi Tola, Lakshman Nagar, Ward No. 4, Bettiah, P.S.-Bairiya, District West Champaran.
12. Janardan Tiwari, son of Late Raghaw Tiwari, Resident of Village-Pathari Ghat, Khushi Tola, Lakshman Nagar, Bettiah, P.S. Bairiya, District West Champaran.
13. Abhishek Kumar, Son of Ganesh Prasad, Resident of Khiriya Ghat, Ward No. 4, P.S. Bairiya, District West Champaran.
14. Santosh Kumar, Son of Late Surendra Prasad, Resident of Mushhari Tola, Hat Saraiya, P.S. Bairiya, District-West Champaran.
15. Rahul Kumar, Son of Sheshnath Rao, Resident of Khushi Tola, Khiriya Ghat, Ward No. 5, P.S. Bairiya, District West Champaran.
16. Sheshnath Rao, Son of Late Babu Ram Rao, Resident of Khushi Tola, Khiriya Ghat, ward No. 5, Bettiah, P.S. Bairiya, District West Champaran.
17. Mahadeo Rao, son of Mahanth Rao, Resident of Khushi Tola, Khiriya Ghat, ward No. 5, Bettiah, P.S. Bairiya, District West Champaran.
18. Sabbir Ansari, Son of Ajija Ansari, Resident of Khushi Tola, Khiriya Ghat, ward No. 5, P.S. Bairiya, District West Champaran.
19. Panna Lal Gupta, Son of Late Kadam Lal Prasad, Resident of Khiriya Ghat, New Colony, Ward No. 4, Bettiah, P.S. Bairiya, District West Champaran.
20. Ranjeet Kumar Diwedi, son of Jagdish Diwedi, Resident of Village-Bhitaha Nijamat, P.S. Bairiya, District West Champaran.
21. Sanjay Kumar Gupta, Son of Late Raja Ram Sah, Resident of Hat Saraiya, Ward No. 3, P.S. Bairiya, District West Champaran.



22. Kaushal Kishore Rao, Son of Late Ram Lochan Rao, Resident of Khushi Tola, Ward No. 5, Bettiah, P.S. Bairiya, District West Champaran.
23. Santosh Kumar, son of Paras Sah, Resident of Choutariya Tola, Khiriya Ghat, P.S. Bairiya, District West Champaran.
24. Mukesh Kumar, son of Shravan Kumar, Resident of Khiriya Ghat, New Colony, P.S. Bairiya, District West Champaran.
25. Hemant Kumar, Son of Shravan Kumar, Resident of Khiriya Ghat, Choutariya Tola, P.S. Bairiya, District West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, Bihar, Patna.
3. The Principal Secretary, Department of Housing and Urban Development, Government of Bihar, Secretariat, Patna.
4. The District Magistrate, Bettiah, West Champaran.
5. The Bettiah Nagar Nigam, through the Executive Officer, Bettiah, West Champaran.
6. The Executive Officer, Nagar Nigam, Bettiah, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Sanjeev Kumar Shrivastava, Advocate
For the Respondent/s : Mr. Y.P. Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7

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 petitioners are permanent residents of *Gram Panchayat* Bhitaha Nizamat (Bhitaha Nezam) in Bairiya Block of the district of West Champaran and certain other places as mentioned in paragraph 5 of the writ application. They are seeking a direction from this Court in exercise of



writ jurisdiction to the State of Bihar to include the *Panchayat* to which the petitioners belong, within the territorial jurisdiction of Bettiah *Nagar Nigam*, which is situate at Zero kilometer of Bettiah town.

It is the petitioners' case that in an exercise undertaken for upgradation of Bettiah *Nagar Parishad* to Bettiah *Nagar Nigam*, the said *Nagar Panchayat*, Bhitaha Nezam was under consideration. However, in final notification issued under Section 6 of the Bihar Municipal Act, 2007, the name of the said *Gram Panchayat* does not figure. The final notification has been brought on record by way of an annexure to the writ application.

Mr. Tej Bahadur Singh, learned Senior Counsel appearing on behalf of the petitioners has submitted that the respondents have failed to assign any reason why the said *Nagar Panchayat* which was initially under consideration and proposed to be included within Bettiah *Nagar Nigam*, upon its upgradation from *Nagar Parishad* stood excluded in the final notification. He has submitted that the location of *Gram Panchayat*, Bhitaha Nezam is such that it ought to have been included within the territorial jurisdiction of the upgraded Bettiah *Nagar Nigam*.



Learned counsel representing the State of Bihar has, however, opposed the relief which the petitioners are seeking in the light of the decisions of this Court rendered on 17.01.2022 and 15.02.2022, in ***CWJC No. 7446 of 2021 (Usha Devi and Ors. Vs. State of Bihar and Ors.)*** and in ***CWJC No. 11414 of 2021 (Kirti Azad Vs. State of Bihar and Ors.)*** respectively.

On perusal of the pleadings in the writ petition and consideration of submissions advanced on behalf of the parties, we do not find any merit in the writ application in view of law clearly laid down in case of ***Usha Devi*** (supra), paragraph 47-52 of which reads thus :-

“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.”

The submission that the respondents ought to have assigned reasons for excluding the said *Nagar Panchayat* in question has also no force in view of the discussions in case of *Usha Devi* (supra). Similar view has been taken in a



subsequent decision in case of *Kirti Azad* (supra).

Accordingly, we do not find any merit in this application.

This application is, thus, dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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