

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13196 of 2021

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1. Md. Jainul, Son of Halim, resident of Aliganj, P.O.-Amour, P.S.-Amour, District-Purnia, Pin Code-854315.
 2. Shahnawaz Khan, Son of Md. Manjoor, resident of Alam, P.O.-Dharia, P.S.-Amour, District-Purnia, Pin Code-854315.
 3. Shamim Akhtar, son of Abdul Karim, resident of Tajpur, P.O.-Amour, P.S.-Amour, District-Purnia, Pin Code-854315.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Urban Development and Housing Department, Bihar, Patna.
3. District Magistrate, Purnea.
4. Block Development Officer, Baisi, Purnea.
5. Circle Officer, Purnea.

... .. Respondents

Appearance :

For the Petitioners : Mr. Abhinav Srivastava, Advocate
For the Respondents : Mr. Subash Prasad Singh, G.A.-3

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

3 07-03-2022 The petitioners have put to challenge a notification dated 03.03.2021 issued by the Urban Development and Housing Department, Government of Bihar, whereby Panchayat, Amour, in the district of Purnea, having nine villages within its area, has been converted into a Nagar Panchayat, in the exercise of the powers and in accordance with the provisions under Sections 3(1)(a), 4, 5, 6 and 8 of the Bihar Municipal Act,



2007.

2. It is not in dispute that before issuance of the notification, a declaration of intention, as required under Section 4 of the Act, was issued, whereafter the petitioners had submitted their objection, a copy of which has been brought on record by way of Annexure-5 to the writ application.

3. It is the petitioners' case that the decision to constitute the Nagar Panchayat, Amour, is based on incorrect facts and wrong data, despite correct facts having been provided to the authorities through objections filed by the petitioners (Annexure-5).

4. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioners has submitted that the demography and the topography of Gram Panchayat, Amour, was such that it ought not to have been declared as a Nagar Panchayat. He has submitted that the respondents failed to notice, before issuance of the impugned notification, the number of MGNREGA cardholders and the fact that 85% of the total population was engaged in agriculture.

5. Section 3 of the Bihar Municipal Act, 2007, as amended by Bihar Municipal (Amendment) Act, 2020, reads as under: -



“3. Declaration of intention to constitute a municipal area.—(1)
The State Government may, after making such inquiry as it may deem fit, and having regard to the population of any urban area, density of population there in, the revenue generated for the local administration of such area, the percentage of employment in non-agriculture activities in such area, the economic importance of such area, and such other factors as may be prescribed, by notification, declare its intention to specify such area to be a larger urban area, or a medium urban area, or a transitional area:

Provided that no such declaration shall be made unless the population

(a) in the case of a larger urban area, is *two lacs* or more,

(b) in the case of medium urban area, is *forty thousand* or more but is less than two lacs, and

(c) in the case of a transitional, area, that is a small town, is *twelve thousand* and more but not more than forty thousand:



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.

Explanation.—“Revenue generated for the local administration” shall not include—

(a) taxes, if any, distributed to the Municipality by the State Government,

(b) loans and grants from the State Government, and

(c) loans and grants from the Central Government or institution or other source.

(2) The State Government shall, by notification, declare an area specified as—

(i) a larger urban area to be a city,

(ii) a medium urban area to be a town, and

(iii) a small town or transitional area to be a Nagar Panchayat or urban growth centre



(3) Notwithstanding anything contained in sub-section (1), the State Government may, by notification, determine separate conditions, to constitute any hill area, pilgrim centre, tourist centre or mandi as a municipal area.”

6. The two provisos to Sub-section (1) of Section 3 of the Municipal Act restrict the exercise of power by the State Government of declaring its intention to constitute a Municipal Area, by putting mandatory conditions.

7. Mr. Srivastava, learned counsel, has not been able to demonstrate with reference to the objections filed by the petitioners, that any of the said objections pointed out breach of any of the statutory requirements under the Act in formation of the Nagar Panchayat in question. It is noteworthy that the second proviso to Section 3 of the Act puts a bar on exercise of the power of the State Government in declaring an area as a municipal area. That bar is to the effect that until the total population of main cultivator workers and marginal cultivator workers taken together is below 50% of the total population of workers in such area in all cases no declaration of intention to constitute a municipal area under Section 3 of the Act. There is no dispute over the fact that the said determination is to be



based on the last census. On careful perusal of the objection filed by the petitioners, we do not find any material to the effect that any of the petitioners' objections could be sustained by operation of the second proviso to Section 3 of the Act.

8. In our view, this case is squarely covered by a Division Bench decision of this Court in the case of *Usha Devi and Others vs. The State of Bihar and Others* (C.W.J.C. No. 7446 of 2021 and another analogous matter, decided on 17.01.2022), paragraphs 38 to 40 of which read as under: -

“38 Section 5 of the Act of 2007 provides an opportunity to any inhabitant in the city, town or Nagar Panchayat in respect of which a notification has been published under Section 4 of the Act of 2007, to object in writing to the State Government within a month from the date of publication conveying intention of the State Government to constitute a municipal area. The opportunity provided under Section 5 of the Act of 2007 must be construed to be for filing of objections with respect to violation/non-fulfillment of the requisite factors contained



in the Act in respect of the larger Municipal area/urban area to be constituted. The opportunity to object cannot be claimed to raise any and every issue under the sun. In the instant case, objections by the petitioners is in respect of parameters which are not germane to the issue of upgradation/constitution of Municipal Area as per the Act.

39 Thus, from a bare reading of the objection, it appears that there is no allegation regarding there being absence of any of the requisite factors/parameters under Sections 3 or 7 of the Act of 2007. When the objection raised is wholly irrelevant, as in the instant case, this Court would consider it useful to refer to decision of the Apex Court in the case of *Bhikhubhai Vithlabhai Patel & Others -Versus- State of Gujarat & Another*, reported in (2008) 4 Supreme Court Cases 144. Paragraph 25 of the said judgment is noteworthy inasmuch as the



same has elaborated the meaning and purport of the word “consider”. Paragraph 25 of the judgment reads as under:

“25. The formation of the opinion by the State Government is with reference to the necessity that may have had arisen to make substantial modifications in the draft development plan. The expression: “as considered necessary” is again of crucial importance. The term “consider” means to think over; it connotes that there should be active application of the mind. In other words the term “consider” postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word “necessary” means indispensable, requisite, indispensably requisite, useful, incidental or conducive, essential,



*unavoidable,
impossible to be
otherwise, not to be
avoided, inevitable.
The word “necessary”
must be construed in
the connection in which
it is used. (See
Advanced Law Lexicon,
P Ramanatha Aiyar, 3rd
Edn, 2005.)”*

40 Being guided by the said judgment, this Court would arrive at a conclusion that consideration is to be of the relevant aspects. The objectors, as in the instant case, cannot be permitted to raise issues which are wholly irrelevant and then claim that the authority is required to consider them, when it is manifest from bare reading of the objection itself that the objections raised are not germane to the issues under the Act of 2007. The State Government, therefore, is fully justified in rejecting the petitioner’s objection as being “not worthy of consideration”.

8. Since the petitioners did not raise any objection against the constitution of the Nagar Panchayat with reference



to the first and second proviso to Section 3 of the Act, their objections were found not worth consideration by the respondents. Further, as has been held in the case of *Usha Devi* (supra), there is no statutory obligation on the State Government/Competent Authority to pass an order on the objection filed by these petitioners. It will be useful to reproduce paragraphs 47 to 52 of the decision in case of *Usha Devi* (supra) 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.”

9. The statutory requirement under Section 5 of the Act is to take into consideration any objection filed by any inhabitant of the area. It does not require the passing of specific orders on any objection filed by an inhabitant under Section 5 of the Act, in our opinion.

10. The impugned order, in our opinion, for the



aforesaid reasons, does not require interference by this Court in
a proceeding under Article 226 of the Constitution of India.

11. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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