

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.792 of 2022

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Anil Kumar Son of Late Saudi Mahto R/o- Shastri Park Nathupura More,
Hanuman Mandir Ke Samne Burari District- North Delhi, At present R/o
Village- Khojakipur, P.O. Ramnathpur, P.S.- Sarmera, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principle Secretary, Department of Urban Development and Housing Department, Government of Bihar, Old Secretariat, Patna.
2. The Principle Secretary, Department of Urban Development and Housing Department, Government of Bihar, Old Secretariat, Patna.
3. The Principle Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
4. The Joint Secretary, Department of Urban Development and Housing Department, Government of Bihar, Old Secretariat, Patna.
5. The Divisional Commissioner, Darbhanga.
6. The Collector, Darbhanga.
7. The State Election Commission through its Secretary, Sone Bhawan, Birchand Patel Path, Patna.
8. The Secretary, State Election Commission, Sone Bhawan, Birchand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Narayan Singh, Advocate Mr. Suraj Kumar Tiwari, Advocate
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta (GP-10) Mr. Satya Vrat, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 30-10-2023

Mr. Shambhu Narayan Singh, learned counsel for the petitioner and Mr. Satya Vrat, learned counsel for State are present.

2. The petitioner by filing the present writ petition seeking quashing of the Notification No. 980 dated 03.03.2021,



issued by the Urban Development and Housing Department Bihar, Patna, whereby and whereunder Sarmera Nagar Panchayat has been created by merging two villages, namely, Khojkipur and Gopalpur, part of Revenue Village – Barhiya, under Block Sarmera, District – Nalanda.

3. The petitioner also sought for quashing of the subsequent orders issued by the Department in the light of the aforesaid notification.

4. Having heard the parties and considering the relief(s) prayed for by the writ petitioner, this Court finds that the issue raised before this Court has already been set at rest by the learned Division Bench of this Court in the case of ***Usha Devi & Ors. Vs. The State of Bihar & Ors.*** in ***C.W.J.C. No. 7446 of 2021***, wherein learned Division Bench of this Court has held as follows:-

“42. We are of the opinion that the scope of judicial review with regard to challenge to constitution/upgradation of municipal areas is also an issue which requires to be considered.

43. The constitutional mandate under Article 243Q of the Constitution of India is for constitution of one or the other of the three classes of urban/municipal areas specified in sub-clauses (a), (b) or (c) in Article 243Q (1) of the Constitution of India.

44. Having laid down such requirement, the proviso to Article 243Q (2) gives discretion to the Governor to determine and specify by public notification, the requisite population, density of population therein, the revenue generated for local administration,



percentage of employment in non-agricultural activity, economic importance and such other factors as the Governor may deem fit for constitution of "a transitional area", "a smaller urban area" or "a larger urban area". The proviso to Article 243Q (1) of the Constitution of India gives similar discretion for constitution of industrial township instead of an urban area. Thus, the Constitution has provided discretion in the Governor for determining and specifying the requisites and for declaration of the class of municipal area/industrial township contemplated under Article 243Q of the Constitution of India.

45. *It is not in dispute that the requisite parameters under Article 243Q (2) of the Constitution of India has been specified in Sections 3 and 7 of Chapter II of the Act of 2007 by the State legislature.*

46. *The publication of intention to constitute a municipal area and consequent constitution of the Municipal Area under the provisions of the Act of 2007, therefore, must be in accordance with; and on fulfillment of the requisite factors specified in Chapter II of the Act. Section 5 of the Act of 2007 which is also part of Chapter II contemplates consideration of objections made by any inhabitant of the city, town or Nagar Panchayat in respect of which a notification declaring intention to constitute a Municipal Area has been published under Section 4 of the Act of 2007.*

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.

53. In view of the foregoing considerations, discussions and observations, this Court is of the opinion that the writ petitions are devoid of merit. The various notifications put to challenge in the instant proceedings are in accordance with the statutory requirements contained in Chapter II of the Act of 2007 and require no interference by this Court.

54. The writ petitions are devoid of merit and are, accordingly, dismissed."

5. In view of the ratio laid down by the learned Division Bench of this Court, the present writ petition stands dismissed.

(Harish Kumar, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.11.2023.
Transmission Date	NA

