

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13427 of 2021

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1. Md. Mukhtar Alam Son of Late Sheikh Jahir Resident of Village- Fanhan, P.S.- Udakishunganj, District- Madhepura.
 2. Bibi Nurani Wife of Md. Mukhtar Alam Resident of Village- Fanhan, P.S.- Udakishunganj, District- Madhepura.

... .. Petitioners

Versus

1. The State of Bihar Through the Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary Urban Development Department, Govt. of Bihar, Patna.
3. The Joint Secretary Urban Development Department, Govt. of Bihar, Patna.
4. The Additional Secretary Urban Development Department, Govt. of Bihar, Patna.
5. The Divisional Commissioner Kosi Division, Saharsa.
6. The District Magistrate Madhepura.
7. The Sub Divisional Officer Udakishunganj, Madhepura.
8. The Block Development Officer Udakishunganj, Madhepura.
9. The Circle Officer Udakishunganj, Madhepura.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Rajeev Kumar Singh, Advocate Mr. Alok Kumar Singh, Advocate
For the Respondents	:	Mr. Shankar Kumar, AC to AAG-7

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 12-05-2022

The petitioners have put to challenge, in the present writ application under Article 226 of the Constitution of India, a notification contained in Memo No.949 dated 03.02.2021 issued by the Urban Development and Housing Department, Government of Bihar, whereby Udakishunganj Nagar Parishad has been created with the inclusion of four Nagar Panchayats, namely, Lakshmipur,



Kishunganj, Rampur Kheda and Rahta Fanhan (East part). Names of the fourteen villages falling in the said Gram Panchayats, which would constitute the Nagar Parishad, have been mentioned in column 3 of the said impugned notification. We must indicate, at the outset, that it has incorrectly been mentioned in the writ petition that the said Nagar Parishad has been created by merging 14 Gram Panchayats.

2. On perusal of the writ application, it can easily be understood that the main ground which has been taken to assail the impugned notification is that the same has been done without issuance of a notification as stipulated under Article 243-Q(2) of the Constitution. The four grounds taken in the writ petition in paragraph 2 center around the requirement of issuance of a notification under Article 243-Q(2) of the Constitution as a condition precedent for constitution of a municipality under the said Article.

3. In paragraph 5 of the writ petition, the petitioners have mentioned the names of the Gram Panchayats, which, according to the petitioners, have been included in the newly constituted Nagar Parishad, Udakishunganj, which also, in our opinion, is an incorrect statement as the said names are the names



of the villages mentioned in column 3 of the notification and not the names of the Gram Panchayats.

4. We have heard Mr Rajeev Kumar Singh, learned counsel assisted by Mr Alok Kumar Singh for the petitioners and Mr Shankar Kumar, learned A.C. to AAG-7 for the State of Bihar.

5. Counter affidavits have been filed on behalf of respondents No.2 to 4 and 6 to 9. A rejoinder affidavit has also been filed on behalf of the petitioners to the counter affidavit filed on behalf of the respondents No. 6 to 9.

6. From the pleadings on record, it appears that there are certain facts leading to the issuance of the impugned notification dated 03.02.2021 in the exercise of powers conferred on the State Government under Section 3(1)(a), 4, 5, 6 and 8 of the Bihar Municipal Act, 2007, which are not in dispute. A notification was issued by the State Government on 26.12.2020 declaring its intention to constitute the aforesaid Nagar Parishad as stipulated under Section 3 of the Act, and the said declaration in the form of notification was published in the official gazette and newspapers as stipulated under Section 4 of the Act. Section 5 of the Act permits any inhabitant of the area in respect of which a notification is published under Section 4 of the Act to object to anything contained in the said notification under Section 4 of the Act.



7. Petitioner No.2 is the wife of petitioner No.1. Petitioner No.1 claims to be ex-Mukhiya, and petitioner No.2 Mukhiya of Rahta Fanhan Gram Panchayat. Petitioner No.1 and others had filed an objection against the proposed creation of Udakishunganj Nagar Parishad, apparently under Section 5 of the Act, a copy of which has been brought on record by way of Annexure-5 to the writ application. It was asserted in the objection that from the date of creation of Udakishunganj as a Sub-Division, the Gram Panchayat has been functional in the said Sub-Division. There is one primary health centre and a referral hospital. Even after the creation of the Sub-Division 30 years ago, no bus stand has been located, nor has any basic infrastructure been created. On the point of population, it was asserted in the objection that more than 50 per cent of the inhabitants of all such Panchayats proposed to be included in Nagar Parishad go outside the State to various places, e.g. Punjab, Delhi and Mumbai, for earning their livelihood as labourers and rest of the population is either engaged in agriculture or are agricultural labourers. Referring to Rahta Fanhan Gram Panchayat, it was asserted that more than half of the population of the said Panchayat is registered with the scheme under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 ('MNREGA' for short) and the rest are



cultivator workers. It was also asserted that there was no enquiry made before taking a decision to notify Udakishunganj Nagar Parishad as stipulated under Section 3(1) of the Act and, therefore, the declaration of intention notified under Section 4 of the Act was in violation of the provisions under the Act.

8. It is the specific case of the State of Bihar in its counter affidavit that the objection submitted by petitioner No.1 and others were duly taken into account by a committee headed by the District Magistrate, Madhepura. Upon due consideration and discussion, the objections raised regarding the creation of the Udakishunganj Municipal Council were rejected by the committee. It has been stated in the counter affidavit that Udakishunganj Sub-Division was established in the early 1980s, and the notified area of the Municipal Council had an old Sub-Divisional Office, Civil Court, Sub-Jail, Telephone Office, Electric Sub Station, full fledged Sub-Divisional Hospital, National Highway 106 connecting N.H. 31, Milk Chilling Plant, Cold Storage, Gas Agency and other establishments. The total population of the notified area of Udakishunganj Nagar Parishad is 46861, as per the 2011 census. These statements have been in the counter affidavit, apparently to justify the decision of the State Government to notify Udakishunganj Nagar Parishad.



9. It is further stated in the counter affidavit filed on behalf of respondents No.2 to 4 that the total working population of Udakishunganj Nagar Parishad is 17330, and the population of main cultivator workers and marginal cultivator workers is 2386, which is 13.76 per cent, much below 50 per cent. It has further been stated in the counter affidavit that based on the information made available to the Department by the District Administration regarding population and administrative and commercial installations coupled with the economic importance of the area, the State Government, exercising its powers under various provisions of the Act, issued the final notification constituting Udakishunganj Nagar Parishad including within its area the aforesaid four Gram Panchayats.

10. Mr Rajeev Kumar Singh, learned counsel appearing on behalf of the petitioners, has made mainly fourfold submissions. It has firstly been submitted that there is no public notification issued by the Governor, requisite under Article 243-Q(2) of the Constitution, which is a condition precedent for constitution of a Nagar Panchayat, a Municipal Council (smaller urban area) or Municipal Corporation (larger urban area) and, therefore, the impugned notification is violative of the constitutional mandate. He has secondly submitted that the



petitioners were not given an opportunity of hearing over the objections filed by them under Section 5 of the Act. It has thirdly been submitted that the break-up of the population in the newly constituted Udakishunganj Municipal Council does not satisfy the requirement of the second *proviso* to Section 3(1) of the Act. He has fourthly submitted that there has been no enquiry as stipulated under Section 3 of the Act as regards population, the density of population, revenue generated for the local administration of the area etc., which is a condition precedent for declaration of intention by way of notification to constitute a municipal area.

11. The main submission that there is no notification as stipulated under Article 243-Q(2) by the Governor in the State of Bihar and, therefore, the creation of a municipality in the State of Bihar is unconstitutional in our opinion is untenable for the reasons discussed and recorded in the judgment and order delivered today (12.05.2022) in C.W.J.C. No. 6193 of 2021 (*Birendra Prasad Yadav vs. The State of Bihar and Others*), while dealing with an identical issue. For the benefit of quick reference, we consider it useful to reproduce relevant paragraphs 18 to 25 of this Court's decision in *Birendra Prasad Yadav* (supra), which read as under: -

18. This Court does not find any legal infirmity in these two letters so as to render them



to be in any manner in conflict with 2007 Act or Article 243-Q of the Constitution.

19. Regarding the other submission of the petitioners' counsel that the requisite uniform parameters for classification and constitution of municipal area has not been specified by public notice and as such, the process of upgradation/constitution is violative of Article 243-Q(2) of the Constitution, this Court would observe that the submissions are not fit to be accepted.

20. Article 243-Q(2) vests discretion in the Governor to specify by public notifications the factors/parameters, based on which "a transitional area" "a smaller urban area" or "a larger urban area" may be upgraded or constituted. Such specification by public notifications as per the constitutional mandate is to be by the Governor having regard to the population, density of population, revenue general for local administration, percentage of employment in non-agricultural activities, economic importance or such other factors as he may deem fit. The various parameters enumerated in Article 243-Q(2) are not exhaustive, but are illustrative leaving discretion in the Governor as he may deem fit. The only prescription is that the parameters have to be uniform and must be specified by public notification for the purposes of this part, being constitution of municipal area.



21. *As noticed above, these parameters have already been laid down by the State Legislature in Section 3 and Section 7 of the 2007 Act as amended by the Amendment Act of 2020. It is not the petitioners' case that the process of upgradation/constitution of the two municipal areas in question are not based on the uniform fixed parameters specified by the 2007 Act. This Court in this context would refer to certain relevant paragraphs from the judgment of the Apex Court in the case of **Champa Lal**(supra), relied upon by the petitioners, which read as follows :*

“7. It is declared under Article 243-Q(2) that the expressions “a transitional area”, “a smaller urban area” and “a larger urban area” (hereinafter collectively referred to as “Areas”) would mean such areas as may be specified by the Governor by a public notification for the purpose of Part IX-A of the Constitution of India. Article 243-Q(2) further obligates the Governor to have due regard to the various factors mentioned therein before specifying the Areas i.e. population of the area, the density of the population, the revenue generated in the area for local administration, percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit.



8. It, therefore, appears from the scheme of Article 243-Q(2) that the Governor is not free to notify “Areas” in his absolute discretion but is required to fix the parameters necessary to determine whether a particular AREA is a transitional area or a smaller urban area or a larger urban area with due regard to the factors mentioned above. It is implicit that such parameters must be uniform for the entire State. It is only after the determination of the parameters, various municipal bodies contemplated under Article 243-Q(1) could be constituted.

(emphasis ours)

9. In response to a specific query whether any notification contemplated under Article 243-Q(2) had been issued by the State of Rajasthan, Mr Guru Krishnakumar, learned Senior Counsel appearing for the State of Rajasthan, produced two Notifications dated 4-7-1995 and 30-4-2012. On a plain reading of both the notifications, it appears that these notifications had been issued in exercise of the statutory powers conferred on the State Government by two different enactments known as the Rajasthan Municipality Act, 1959 (since repealed) and the Rajasthan Municipalities Act, 2009. Apart from the declaration regarding the source of power for the issuance of these notifications to be



authority conferred by the various provisions of the abovementioned two enactments, it appears from the tenor and scheme of the notifications that these notifications purport to classify municipalities only on the basis of population. The various other parameters to which regard is required to be had under Article 243-Q(2) were not taken into consideration for the purpose of classification made under the abovementioned two notifications. Therefore, in our opinion, these two notifications cannot be treated as notifications contemplated under Article 243-Q(2).

22. We have supplied emphasis by underscoring paragraph 8 in the quotation of relevant extracts from the judgment of the Apex Court in the case of **Champa Lal** (supra), as the same lays down as to what is substantial compliance with the constitutional requirement under Article 243-Q(2) of the Constitution.

23. Within the limits of constitutional discretion vested in the Governor under Article 243-Q(2) of the Constitution, this Court finds that the requisite parameters for determining whether an area is to be constituted/upgraded as a transitional area, a smaller urban area or a larger urban area, is clearly specified by the 2007 Act. Sections 3, 7 and 13, taken note of above, in clear and specific terms lay down the requisite



*parameters in furtherance of the constitutional mandate under Article 243-Q(2) of the Constitution. The constitutional requirement of requisite parameters, as per the decision of the Supreme Court in the case of **Champa Lal** (supra), are therefore held to be satisfied by the above noted provisions of the 2007 Act.*

24. The petitioners have not raised any objection that the above noted parameters specified in the 2007 Act are not satisfied or fulfilled in respect of the two areas constituted as urban area, namely, Nagar Panchayat Jankinagar (Banmankhi) and Nagar Panchayat Rupouli.

*25. In view of the aforesaid discussions, considering the judgment of the Apex Court in the case of **Champa Lal** (supra), Article 243-Q(2) of the Constitution and the provisions contained in the 2007 Act, this Court would conclude that the process of upgradation/constitution has been done based on uniform specified parameters contained in 2007 Act, which have been enacted in furtherance of the constitutional objective under Article 243-Q, and which are in consonance with the requirement of public notice as per decision of the Supreme Court of India in the case of **Champa Lal**(supra); and which has never been assailed by the petitioners. The process of upgradation and consequent upgradation/constitution of Nagar Panchayat Jankinagar (Banmankhi) and Nagar Panchayat*



Rupouli therefore does not suffer from any constitutional/legal infirmity."

12. The submission of denial of hearing to the objectors under Section 5 of the Act, in our opinion, has no merit in view of the law enunciated in the Division Bench decision of this Court in case of ***Usha Devi and Others vs. The State of Bihar and Others***, reported in **2022(1) PLJR 833**. Paragraphs 21 to 23, 47 to 49 and 51 and 52 thereof are relevant and are being reproduced hereinbelow:-

"21 Another aspect of the matter is that fulfillment of requisite factors under Sections 3 and 7 of the Act of 2007 has to be considered in relation to "such area". The expression "such area" has repeatedly been used in Section 3 of the Act of 2007 and refers to the "urban area", which was proposed to be constituted and to come into existence as a result of the process of constitution/upgradation of Municipality/Urban Area.

22 It is clear from these statutory provisions that the requisite population, density of population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance and other requirements, contemplated under Sections 3 and 7 of the Act of 2007, are not requirements in respect of the rural area/individual panchayat/small municipal area, which are



sought to be included for the purposes of upgradation or constitution of Municipal Area under the Act of 2007. The said requisites are to be satisfied in respect of the municipal area which has to come into existence as a result of the process undertaken for constitution of municipality in accordance with Chapter II of the Act of 2007.

23 Thus, in our opinion petitioners' case, that the requisite composition of non-agricultural population/workers are to be satisfied in respect of all the four individual Gram Panchayats, is misconceived and fallacious.

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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.

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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."

13. Following the decision rendered in the case of ***Usha Devi*** (supra), the impugned notification, thus, cannot be assailed, in our opinion, on the ground that the petitioners were not given an opportunity of hearing or on the basis that no reasoned order has been passed demonstrating consideration of the objections raised by the petitioner No.1.

14. The third submission that the break-up of the population of main cultivator workers and marginal cultivator workers as against the total population of workers does not satisfy the statutory requirement of Section 3 of the Act is also untenable for two reasons. Firstly, it has not been specifically pleaded in the writ application, nor such an objection was raised under Section 5 of the Act that the total population of main cultivator workers and marginal cultivator workers is above 50 per cent of the total population of workers in the area falling within the notified Udakishunganj Municipal Council. Secondly, there is a specific averment made in the counter affidavit filed on behalf of respondents No. 2 to 4 that the population of main cultivator



workers and marginal cultivator workers is 2386 as against the total working population of 17330; which is 13.76 per cent of the total working population. The said specific averments made in the counter affidavit have remained uncontroverted. The third submission, thus, is also untenable.

15. The fourth submission that there has been no enquiry as mandated under Section 3(1) of the Act before the issuance of declaration under Section 3 with the publication of the notification under Section 4 of the Act, in our opinion, has no ground to stand. It can be easily inferred from the language used in Section 3(1) of the Act that it confers upon the State Government ample power and discretion to declare its intention to specify any area to be larger urban area, medium urban area or a transitional area, upon taking into account various aspects mentioned under the Act. The provision does not stipulate any particular kind of enquiry to be conducted before the declaration of its intention to specify an area as a larger urban area or a medium urban area, or a transitional area. In our opinion, unless a notification under Section 6 of the Act is demonstrated to be contrary to the requirements under the *proviso* to Section 3 and the provisions under Section 7 of the Act, such notification cannot be successfully challenged on the ground of not meeting the statutory prescription in relation to the



population. This very aspect has been elaborately considered by a Division Bench of this Court in its decision rendered on 21.03.2022 in **C.W.J.C. No. 6251 of 2021 (Navin Kumar Vs The State of Bihar and Others)** and another analogous matter, paragraphs 16 to 18 of which read as under: -

"16. Mr. S.B.K. Mangalam, learned counsel, has referred to the provisions under Section 3 of the Municipal Act to contend that the said provision requires making of inquiry by the State Government having regard to the population of any urban area, the density of population therein, revenue generated for the local administration of such area, percentage of employment in non-agricultural activities in such area, the economic importance of such area, etc.. He has argued that Section 3 mandates such inquiry to be conducted by the State Government before issuance of a notification under the provisions of the Act for constitution of an urban area. He has further argued, with reference to the averments made in the writ application that before issuance of the impugned notifications, no officer had ever visited the area in question to conduct an inquiry as stipulated under Section 3(1) of the Act and, therefore, impugned notifications are legally unsustainable.



17. In view of the aforesaid submissions, we deem it proper to reproduce Section 3 of the Bihar Municipal Act which reads as under :

"Section 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 non-agricultural population in all cases shall be seventy five per cent or more.



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."

18. *In our view, it is manifest on a plain reading of Section 3 of the Act that the use of the expression 'may', 'for making such inquiry as it may deem fit', 'having regard to the population of any urban area, etc.' suggest that discretion lies with the State Government to declare its intention to specify such area to be a larger area or a medium urban area or a transitional area. The first and second proviso to sub-section (1) of*



Section 3 of the Act, as is evident from the language used are directory in character. The expressions 'may', and 'may deem fit' as falling in sub-section (1) of Section 3 disclose the legislative intent, which confers upon the State Government discretion in the matter of constitution of an urban area/municipal area. The authority of the State Government to constitute a municipal area is restricted, however, broadly by the two provisos attached to sub-section 1 of Section 3 of the Act and the provisions under Section 7 of the Act."

16. In view of the aforementioned discussions, we do not find any merit in this application. This application is accordingly rejected.

17. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

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