

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4394 of 2021

1. Shyamsundra Prasad, male, aged about 40 years, Son of Shri Ram khelavan Prasad resident of village- Hasanpur, P.O.- Nahub, P.S.- Rajgir, District- Nalanda at Biharsharif
 2. Rajiv Ranjan Kumar, male, aged about 28 years, Son of Sri Anil Kumar resident of village- Hasanpur, P.O.- Nahub, P.S.- Rajgir, District- Nalanda at Biharsharif
 3. Anil Das, male, aged about 48 years, Son of Sri Parmeshwar Das resident of village- Hasanpur, P.O.- Nahub, P.S.- Rajgir, District- Nalanda at Biharsharif
- Petitioners

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, Patna Division, Patna
5. The District Magistrate, Nalanda at Biharsharif, District- Nalanda at Biharsharif
6. The Sub Divisional Officer, Rajgir, District- Nalanda at Biharsharif
7. The Nagar Panchayat Rajgir through the Executive Officer, P.O. and P.S.- Rajgir, District- Nalanda at Biharsharif
8. The Gram Panchayat Raj Nahub through the Panchayat Secretary, P.O. Nahub, P.S.- Rajgir, District- Nalanda at Biharsharif

... .. Respondents

Appearance :

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| For the Petitioners | : | Mr. Shashi Bhushan Kumar Manglam with Mr. Awnish Kumar |
| For the State | : | Mr. Rajiv Sinha, Adv. |
| For the Nagar Panchayat Rajgir | : | Mr. Rajiv Ranjan Kumar Pandey, Adv. |
| For the Gram Panchayat | : | Mr. Sanjay Kumar Tiwari, Adv. |

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 11-03-2022

A notification dated 26-12-2020 (Annexure-4) was issued by the State Government notifying the State's intention to upgrade *Nagar Panchayat, Rajgir* so as to constitute a Municipal Council, *Rajgir*. The writ petition has been filed for quashing this notification dated 26-12-2020, issued in exercise of power of the State Government, under Section 4 of the Bihar Municipal Act, 2007 (for short 'the Act').

2. During pendency of the writ petition, the Municipal Council, *Rajgir* has finally been constituted by way of upgradation of the erstwhile Nagar Panchayat, *Rajgir* by issuance of a notification dated 03-03-2021, issued by the State Government, under Section 6 of the Act. The same has been assailed by way of an Interlocutory Application bearing I.A. No. 01 of 2021.

3. We have heard the learned counsel for the petitioners as well as learned counsel for the respondents.

4. Learned counsel for the petitioners submits that the exercise for upgradation is illegal. The grounds in support of such submission are as follows:-

(i) In the process of upgradation of the *Nagar Panchayat*,



the Authorities have not complied with the requirement of consultation with *Nagar Panchayat, Rajgir* as required under Section 8 of the Act.

(ii) The Authorities have also not consulted the *Gram Panchayats* concerned, before including the area falling within 11 villages, which have been taken out of the erstwhile *Gram Panchayat Area*, in violation of the mandate of Section 11 of the Act.

(iii) There is no enquiry as contemplated under Section 3(1) of the Act.

(iv) Inclusion of the village *Hasanpur*, which was a constituent of Nahub Gram Panchayat, is objected to by submitting that the residents of village *Hasanpur* are mostly agriculturist and the inclusion of revenue village *Hasanpur* leaving other villages contiguous to *Nagar Panchayat Rajgir* is based on extraneous consideration. It is also submitted that as per 2011 census, the revenue village *Hasanpur* comprises of 62.96% of main workers and cultivator workers and, therefore, the inclusion of Revenue village *Hasanpur* is in violation of the proviso to Section 3(1) of the Act.

(v) The notification dated 03-03-2021 under Section 6 of the Act merely records "प्राप्त आपत्तियों पर सम्यक



विचारोपरान्त.....”, is without assigning any reason and being a non-speaking order, is contrary to the mandate of Section 5 of the Act which obliges the State Government to consider the objection, prior to issuance of notification under Section 6 of the Act.

(vi) The objection raised by the inhabitants has been considered by a Committee at the District Level and not by the State Government, as required under Section 5 of the Act and, therefore, the entire exercise of upgradation/constitution is unsustainable, being contrary to the procedure prescribed in the Act.

5. Petitioners’ counsel has relied upon the decisions in the case of *Baldev Singh and Ors. Vs. State of Himachal Pradesh & Ors.* reported in (1987) 2 SCC 510, 2010 (4) PLJR 583 (*Neelam Devi vs. The State of Bihar & Ors.*) and 2011 (1) PLJR 401 (*Anand Kumar Jha & Ors. Vs. The State of Bihar & Ors.*) in support of his submissions that based on above noted submissions/grounds the notifications dated 26-12-2020 under Section 4 of the Act, and 03-03-2021 under Section 6 of the Act, are unsustainable in the eyes of law being in violation of the statutory procedure prescribed under the Act.

6. The respondents have filed two counter affidavits.



One has been filed on behalf of the Respondent No.8 (*Gram Panchayat Raj, Nahub*) and the other counter has been filed on behalf of the Respondent Nos. 2 and 3 being the Urban Development and Housing Department, Govt. of Bihar, Patna. The Department, in its counter affidavit, has brought on record, communication to show that an exercise, as contemplated under Section 3(1) of the Act, has been undertaken by the Respondent Authorities and, upon fulfillment of the requisite parameters contained in Sections 3 and 7 of the Act, the Authorities have issued the notification publishing their intention to declare a larger Municipal area, namely, Municipal council, *Rajgir* by including certain villages and upgrading the existing *Nagar Panchayat, Rajgir*. In this connection, reliance is placed on Annexure-R-2 and 3/B of the counter affidavit, to contend that Urban Development and Housing Department had written to all District Magistrates, under communication dated 13.12.2020, asking them to forward proposal for constitution of new urban local bodies or upgradation of old urban local bodies having regard to the relevant parameters, as contemplated under Sections 3 and 7 of the Act. A workshop-cum- Review meeting was scheduled to consider the suggestions which were received from various districts and were examined Commissionery wise.



The various proposals, thereafter were examined at the Departmental level with input from various districts and after such enquiry, as contemplated under Section 3(1) of the Act, the suggestions were finalized.

7. After undertaking such exercise, pursuant to communication dated 13-12-2020, based on such enquiry in terms of Section 3(1) of the Act, with respect to the various parameters, which were forwarded in respect of the *Nagar Panchayat, Rajgir*, by a District Level Committee and; on fulfillment of the requisite parameters, notification under Sections-4 and 8 of the Act dated 26-12-2020 was issued.

8. Pursuant thereto, objections including the petitioners' objections under Section 5 of the Act was received and forwarded to the concerned District Magistrates, in this case District Magistrate, Nalanda, to consider the same and forward recommendation/opinion within a time specified. The objections along with input received from the Districts were to be taken into consideration at the Departmental Level. The District Magistrate, under communication dated 30-01-2021(Annexure-F), thereafter, examined the objections and suggestions and forwarded his recommendation to the Principal Secretary of the Department. After such an exercise undertaken as per Sections



3, 4, 5, 6 and 8 of the Act that the Governor was pleased to issue the final notification upgrading *Nagar Panchayat, Rajgir, into a Municipal Council Rajgir*, by constituting a larger municipal area, namely, Municipal Council, *Rajgir*, including certain villages which were contiguous to the municipal area. It is also submitted that petitioners' plea based on Section 11 of the Bihar Panchayat Raj Act, 2006 (for brevity, the Act of 2006) is misconceived as it is not applicable in the matter of constitution of Municipality under the Act.

9. In so far as the exercise contemplated under Sections 3 to 6 of the Act this Court would observe that satisfactory material has been placed on record in the counter affidavit as taken note of hereinabove. The submissions of the State counsel are founded upon the averments made in the counter affidavit along with Annexurs including the communications issued during the process undertaken by the Authorities under Chapter-II of the Act. The specific averments based on these documents have not been controverted by the petitioners by filing any rejoinder. Factual assertions in the counter affidavit are, therefore, neither denied nor disputed. Accordingly, this Court would find that the upgradation of *Nagar Panchayat, Rajgir*, in constitution of Municipal council, Rajgir is after making an



enquiry as contemplated under Section 3(1) of the Act and, on fulfillment of the requisite parameters contemplated under Sections 3 and 7 of the Act. The procedure for publication of intention to declare a larger Municipal area, inviting objections thereupon and taking objections and suggestions into consideration has been followed strictly as per the statutory provisions contained in Sections 4, 5 and 6 of the Act. By issuance of a notification under Section 4 adequate opportunity was given to all, including Nagar Panchayat, Rajgir, to give their objections/suggestions or views. Second proviso to Section 8 has also, thus, been followed. The exercise undertaken, therefore, does not suffer from any statutory illegality.

10. Submission Nos. 4(i) (iii) & (vi) therefore have been met by the respondents and are rejected accordingly.

11. Submission No. 4 (ii) alleging violation of Section 11 of the Act of 2006 has already been considered by the Division Bench of this Court in case of **Usha Devi and Ors. vs. The State of Bihar & Ors. in C.W.J.C. No. 7446 of 2021** which, this Court would consider appropriate to refer by way of quotation from paragraphs 24, 25 and 26 which reads as follows:-

“24 There is also no legal basis for the petitioners to contend that till such time their



tenure as Mukhiya under the provisions of the Bihar Panchayat Raj Act, 2006 (for brevity, the Act of 2006) is not completed, the draft notification under Section 4 of the Act of 2007 cannot be issued. Scope and applicability of the Act of 2006 under which the petitioners claim security of tenure as Mukhiya is clear from Section 1 of the Act of 2006, as it stands subsequent to its amendment by the Bihar Panchayat Raj (Amendment) Act, 2007, w e f 04.09.2017 which reads as follows:

“1. Short title, Extent and Commencement.-(1) This Act may be called the Bihar Panchayat Raj (Amendment) Act, 2017.

(2) It shall extend to the whole of the State of Bihar excepting the areas to which the provisions of the Bihar Municipal Act, 2007 (Bihar Act No 11 of 2007) or Cantonment Act, 1924 (Act II of 1924) apply.

(3) It shall come into force at once.”

25 The statute, in unambiguous terms mandates, that it extends to the whole of the State of Bihar, excepting the area to which the provisions of the Act or Cantonment Act, 1924 applies.

26 The irresistible conclusion is that the moment the provisions of the Act of 2007 are applied, by virtue of a notification issued under Section 4 of the Act of 2007 declaring intention to constitute a particular area as a Municipal Area, the Act of 2006; and the security of tenure as Mukhiya, claimed by the petitioners thereunder, cannot come in the way of the process for upgradation or constitution of a municipality in accordance with the Act.”

No further consideration is required on this issue having regard to the clear conclusion in case of *Usha Devi* (supra) taken note of on this point, that the *Panchayat Raj* Act and its provisions would cease to apply as soon as the provisions of the



Act are applied by issuance of a notification under Section 4 of the Act, which in the instant case is dated 26-12-2020.

12. The submission No. 4(iv) to the extent that the Revenue village *Hasanpur* does not fulfill the requisite parameters contemplated under Section 3(1) of the Act is also an issue, which stands concluded by the Division Bench of this Court in case of *Usha Devi* (supra), in paragraphs 21, 22 and 23, wherein, identical submission has been dealt with in the following terms:-

“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.”

13. Submission 4(v) assailing the notification under Section 6 on the ground that objection filed under Section 5 has been rejected without assigning any reason being a non-speaking order is also an issue which stands concluded by decision of Division Bench in case of *Usha Devi* (supra), more specifically, paragraphs 47, 48,49,50, 51 & 52 and, thus, may usefully be reproduced as follows:-

“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.”

14. Having regard to the above consideration, the submissions of the petitioners' counsel are held to be devoid of any merit. Challenge to the notifications are factually and legally unsustainable. The Court has found no procedural infirmity. Entire procedure under Chapter-II of the Act has been followed while issuing the impugned notification. The submission of the petitioners' counsel having been considered above with reference to Division Bench judgment in the case of *Usha Devi* (supra) which covers the submissions of the instant



case, does not leave any further scope for consideration in respect of submissions advanced on behalf of the petitioners in the instant proceedings, much less any interference by this Court by sitting in judgment over the decision to constitute a Municipality.

15. The writ petition is dismissed.

(Madhuresh Prasad, J)

I agree.

Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

shyambihari/-

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