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(2010) 10 PAT CK 0077

In the Patna High Court

Case No : CWJC Nos. 1297, 4039 of 2010

Anand Kumar Jha and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Citation : (2010) 10 PAT CK 0077

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Both these writ petitions have been filed challenging Government Notification vide Memo No. 4(N)GATH-09/2008/1691 dated 20.5.2009 by which Benipur Nagar Parishad was created with immediate effect by merging 24 villages, including several Gram Panchayats e.g. Gram Panchayat Raj Basuham, Gram Panchayat Raj Benipur, Gram Panchayat Raj Bahera and Gram Panchayat Raj Mahujala all of Sub-Division Benipur in the district of Darbhanga and also for quashing all follow up actions pursuant to the aforesaid notification.

2. The first writ petition was filed by four persons, all of whom were Mukhiyas of different Gram Panchayats of Benipur Block under Darbhanga district, out of whom the names of Petitioner Nos. 2, 3 and 4 were deleted by learned Counsel for the Petitioners and the first writ petition proceeded only with Petitioner No. 1. The second writ petition has been filed by one person, who is the resident of Benipur Sub-Division. Petitioners of both the aforesaid writ petitions have claimed that neither the said Gram Panchayats have completed their five years term fixed in law nor any allegation has been levelled against them nor the consents of the said Gram Panchayats concerned have been obtained before taking the aforesaid decision.

3, In the first writ petition I.A. No. 1049 of 2010 was filed by the Petitioner for adding a further relief to the writ petition challenging Letter No. 5974 dated 17.12.2009 (Annexure-5) sent by Deputy Secretary-cum-Director, Urban Development and Housing Department, Government of Bihar to the Secretary,

State Election Commission, Patna communicating him the affirmative decision of the State Government to the proposed schedule of election of Benipur Nagar Parishad to be held by the Commission as well as Letter No. 3415 dated 16.12.2009 (Annexure-6) sent by the Secretary, State Election Commission, Patna to the Secretary, Urban Development and Housing Department, Government of Bihar giving the detailed programme for election of the newly constituted Benipur Nagar Parishad, which is under challenge in the writ petition. A prayer for an interim order of stay was also sought in the said interlocutory application. This Court vide order dated 5.2.2010 added the said relief to the writ petition, but in view of the proximity of the election the court did not stay the election and only directed that the results of the election shall not be announced and the constitution of the Nagar Parishad and the election consequently held, would be subject to the result of the writ petition.

4. learned Counsel for the State of Bihar and its authorities (Respondent Nos. 1 to 6) as well as learned Counsel for the State Election Commission and its Secretary (Respondent Nos. 7 and 8) contest the claim of the Petitioners of both the writ petitions.

5. I.A. No. 2222 of 2010 and I.A. No. 3421 of 2010 were filed by two interveners, namely S.M. Ali Imam and Surendra Kumar Jha, who had contested the election of Benipur Nagar Parishad from different wards, for being impleaded as Respondents in the first writ petition and their said applications were allowed vide order dated 15.7.2010 and they were directed to be added as Respondent Nos. 9 and 10. They contest the claim of the writ Petitioners.

6. I.A. No. 6339 of 2010 was filed by one Mahendra Paswan for being impleaded as party Respondent in the first writ petition claiming that he had contested the election of Benipur Nagar Parishad from one of its wards. Hence, this interlocutory application is allowed and he is permitted to be added as Respondent No. 11 to the first writ petition. He contests the claim of the writ Petitioners.

7. I.A. No. 6900 of 2010 was filed by three applicants, namely Shailendra Mohan Paswan, Smt. Manjula Devi and Smt. Arti Devi for being added as intervener Petitioners in the first writ petition claiming that when the said writ petition was filed they were Petitioner Nos. 2, 3 and 4 and they had also filed their duly executed vakalatnama, but the then learned Counsel for the Petitioners wrongly deleted their names on 19.1.2010. In the said circumstances, they want to proceed with the first writ petition alongwith Petitioner No. 1 for the releifs claimed therein. They have also filed their duly executed vakalatnama and accordingly the said interlocutory application is allowed and they are permitted to be added as Petitioner Nos. 2, 3 and 4 to the first writ petition.

8. Another application bearing I.A. No. 6948 of 2010 has been filed by three applicants, namely Bisundeo Paswan, Mani Kant Jha and Lallan Jha for being added as party Respondents in the first writ petition claiming that they were also

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residents of Benipur Sub-Division. Accordingly, this interlocutory application is allowed and they are permitted to be added as Respondent Nos. 12, 13 and 14 to the first writ petition. They support the claim of the writ Petitioners.

9. learned Counsel for the Petitioners of the first writ petition (C.W.J.C. No. 1297 of 2010) stated that Benipur Block of Darbhanga district contained several Gram Panchayats, namely Gram Panchayat Raj Basuham, Gram Panchayat Raj Benipur, Gram Panchayat Raj Bahera and Gram Panchayat Raj Mahujala each of them having jurisdiction over several villages. In all the foresaid Gram Panchayats elections were admittedly held in the year 2006 and since then the said Gram Panchayats with their elected representatives and Mukhiyas had been duly functioning in accordance with the provisions of the Bihar Panchayat Raj Act, 2006 and their tenure of five years is going to expire in the year 2011.

10. learned Counsel for the Petitioners of the first writ petition also stated that all of a sudden on 20.5.2009 Notification No. 1691 of 2008 (Annexure-4) was issued by Urban Development and Housing Department, Government of Bihar under the provision of Section 6 of the Bihar Municipal Act, 2007 constituting Benipur Nagar Parishad (Municipal Council) amalgamating 24 villages mentioned therein which were parts of four Gram Panchayats mentioned above within Benipur Block and holding that the provisions of the Bihar Municipal Act, 2007 will be applicable to the entire area, meaning thereby that the provisions of the Bihar Panchayat Raj Act, 2006 would no longer be applicable to the said villages and the Gram Panchayats, consisting of the said villages, would become non-existent much before the expiry of their terms of five years as provided in law.

11. learned Counsel for the Petitioners of the first writ petition claimed that after enquiry they learnt that on 21.10.2008 Letter No. 2008/C was sent by the Deputy Secretary-cum-Director, Urban Development and Housing Department to the District Magistrate, Darbhanga stating that the Minister of the Department had sent Memo No. 722 dated 3.10.2008 for taking steps under the provisions of the Bihar Municipal Act, 2007 for formation of Nagar Panchayat of Benipur Block in which at least 75 per cent population were dependent on non-agricultural resources and hence the District Magistrate, Darbhanga was directed to send information on the annexed form with regard to the required informations and clear proposal. It further transpires that in response to the aforesaid letter the District Magistrate, Darbhanga filled up the form and sent it alongwith his recommendation (Annexure-3 series at page-18) stating that the population of the said area of Benipur Block was 2,03,000 out of which 48,000 persons were not dependent on agricultural resources, which amounted to more than 75 per cent of the population. It also transpires that a draft notification u/s 4 of the Bihar Municipal Act, 2007 was published on 20.1.2009 with respect to the aforesaid 24 villages for creation of Benipur Nagar Parishad calling for objection u/s 5 of the Act, but it was not published in any newspaper as required in law nor any enquiry was held as required u/s 3 of the said Act.

12. learned Counsel for the Petitioners of the first writ petition further claimed

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that the calculation made by the authorities was prima facie wrong and no concrete data was produced nor there was any material to show that the said area had 75 per cent urban population. Section 7 of the Bihar Municipal Act, 2007 specifically provided that for the aforesaid purposes the last preceding census has to be considered and the last census was of 2001, whereafter no census had been done and hence in view of the aforesaid provisions of law formation of Nagar Panchayat had to be done on the basis of the aforesaid census of 2001, but the said census (Annexure-13 to supplementary affidavit dated 30.4.2010) clearly showed that in the entire Benipur Block there was no urban population rather the entire population was rural and based on agriculture.

13. learned Counsel for the Petitioners of the first writ petition averred that 90 per cent of the families of Benipur Block are involved in agriculture and allied works and there is no industry or urban business centre therein and hence elections of Gram Panchayats were held in those areas in the year 2006, whereafter the elections of Primary Agriculture Credit Societies were also held in those villages and the said Panchayats and Societies have been working since then, without ever being disturbed.

14. It was also argued on behalf of learned Counsel for the Petitioners of the first writ petition that according to the provisions of the Bihar Municipal Act, 2007 it was incumbent upon the authorities to take any such step only after consultation with the various Gram Panchayats in the Block, but the authorities concerned without even informing them, suo motu issued notification merely on the basis of whims and fancies of the politicians as well as the Minister of the Department concerned, without even ascertaining the wishes of people of the area and without following the procedure prescribed in law. Hence, he submitted that the impugned notification is fit to be rejected.

15. learned Counsel for the Petitioner of the second writ petition (C.W.J.C. No. 4039 of 2010) added that letter dated 21.10.2008 (Annexure-2) sent by Urban Development and Housing Department to the District Magistrate, Darbhanga as well as Report of the Block Development Officer, Benipur dated 24.10.2008 sent to the District Magistrate, Darbhanga clearly showed that original proposal was to create Benipur Nagar Panchayat from Gram Panchayats but finally it was converted to Nagar Parishad. He further submitted that Government Letter (Annexure-2) was sent on 20.10.2008, whereafter the Sub-Divisional Officer sent the Memo on 23.10.2008 to Block Development Officer for enquiry and report and the Block Development Officer submitted his report on 24.10.2008, although such an extensive matter with regard to population of the entire Block and its occupation with details cannot be possibly enquired into and reported within one day. Hence he submits that such a serious matter requiring detail enquiry was done in a most hasty manner apparently due to illegal pressure from above.

16. learned Counsel for the Petitioner of the second writ petition also claimed that the provision of Sections 3 and 4 of the Bihar Municipal Act, 2007 was not complied by the authorities concerned as neither any enquiry was held nor any

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publication was made in accordance with law nor even any objection was called, although it was statutory duty of the authorities concerned. He further stated that the Respondents have failed to show by any material the basis of their assumption that 75 per cent of the population of Benipur Block had become urban, although in the last census of 2001 the entire population of Benipur Block was found dependent upon agriculture.

17. learned Counsel for the applicants of I.A. No. 6900 of 2010, who have been added as Petitioner Nos. 2, 3 and 4, adopted the arguments of learned Counsel for the Petitioners of both the writ petitions. learned Counsel for the applicants of I.A. No. 6948 of 2010, who have been added as Respondent Nos. 12, 13 and 14 to the first writ petition, supported the claim of the writ Petitioners reiterating that no step was taken by the authorities in accordance with law nor any opportunity was given by the authorities to the concerned persons or the Gram Panchayats to participate in the enquiry or the proceeding.

18. learned Counsel for the State of Bihar and its authorities vehemently opposed the claims raised by the Petitioners and stated that Benipur Sub-Division was created vide notification No. 524 dated 20.11.1976 having its Headquarter at Benipur which is market area and Gram Panchayats of Benipur, Bahera, Basuham and Mahujala are adjoining to the Sub-Divisional headquarter of Benipur and more than 80 per cent population of the said area is dependent on non-agricultural activities and is engaged in business and commercial activities which are amply present in the area which is fully explained in the report of the Sub-Divisional Officer, Benipur and hence it fulfils all the criteria of a Nagar Parishad. It is also stated that Benipur Nagar Parishad includes Bahera Bazar, Registry Office, Police Station, Colleges, Courts of Law and Government Offices.

19. learned Counsel for the State of Bihar and its authorities also averred that Petitioner No. 1 of the first writ petition was the Mukhiya of Basuham Gram Panchayat and he had himself contested Benipur Nagar Panchayat election from Ward No. 8, whereas Petitioner No. 3 of the first writ petition had also contested Benipur Nagar Parishad election from Ward No. 15 and hence both of them had accepted the creation of Benipur Nagar Parishad and they have no right to file the instant writ petition. learned Counsel for the State of Bihar further averred that the resolutions were passed by all the persons concerned and only thereafter the process of converting the entire area of the said four Gram Panchayats into Benipur Nagar Parishad was started which was legal and proper and in accordance with the provisions of the Bihar Municipal Act, 2007.

20. Hence he argued that there is no occasion for this Court to interfere specially when the power of judicial review is limited to process only. In this connection learned Counsel for the State of Bihar relies upon a decision of Full Bench of this Court in case Shree Krishna Prasad Singh and Ors. v. The State of Bihar and Ors. 1978 P.L.J.R. 446 as well as a decision of this Court in case of Sheonath Rai and Ors.s v. The State of Bihar 1989 (1) P.L.J.R. 56 . learned Counsel for the State of

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Bihar also relied upon a decision of the Apex Court in case of Bhaskar Textile Mills Ltd. Vs. Jharsuguda Municipality and Others,

21. learned Counsel for the State Election Commission and its authorities also opposed the contentions of learned Counsel for the Petitioners and stated that when after draft notification no objection was received from anyone, final publication was made by the authorities concerned and hence it was legal and valid and has been frivolously challenged by the writ Petitioners. *He also adopted the arguments made by learned Counsel for the State of Bihar and its authorities and relied upon an order of a Division Bench of this Court dated 16.7.2010 passed in C.W.J.C. No. 6291 of 2010 of Sangita Devi v. The State of Bihar and Ors. C.W.J.C. No. 6291 of 2010s.

22. learned Counsel for the applicant of I.A. No. 2222 of 2010, who has been impleaded as Respondent No. 9 to the first writ petition, also contested the claim of the Petitioners stating that the total population of the Parishad is 62,203 out of which 48,000 are based on non-agricultural activities and hence more than 75 per cent of the population is engaged in non-agricultural work which is apparent from the report of Sub-Divisional Officer, Benipur dated 24.10.2008 (Annexure-C to I.A. No. 2666 of 2010). He further stated that Petitioner No. 3 of the first writ petition had raised objection to the draft notification on 31.7.2009 (Annexure-E to second supplementary counter affidavit) which was rejected by the concerned authority, namely Sub-Divisional Officer, Benipur on 16.8.2009 (Annexure-F) but the said rejection was never challenged by any of the Petitioners.

23. learned Counsel for Respondent No. 9 also relied upon a decision of this Court in case of Raghunath Pandey and Others Vs. The State of Bihar and Others, as well as four decisions of the Apex Court on the point of judicial review in case of Tata Cellular Vs. Union of India, , in case of Anugrah Narain Singh and Another Vs. State of U.P. and Others, in case of BALCO Employees Union (Regd.) Vs. Union of India and Others, and in case of Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain,

24. learned Counsel for the applicant of I.A. No. 3421 of 2010, who has been impleaded as Respondent No. 10 to the first (sic) petition, also challenged the claim raised by the Petitioners and averred that in view of the provisions of Article 226 of the Constitution of India, the High Court is not an appellate court and hence it has only the jurisdiction for a judicial review when there is a violation of any specific provision of law or there is a grave error in the procedure adopted by the authorities. He further claimed that there is no illegality in the impugned action of the authorities as Section 3 of the Bihar Municipal Act, 2007 is a provision for transition of the area from Panchayat to Municipality and no bar is provided in developing the area of Gram Panchayat into a Nagar Parishad, if it fulfils all the criteria and the Government is satisfied on the basis of materials on record. He further claimed that all the process as provided under Sections 3, 5 and 6 of the Bihar Municipal Act, 2007 had been adopted by the authorities and hence there is no occasion for any fishing enquiry into the matter specially when

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no objection has ever been raised u/s 5 of the Bihar Municipal Act, 2007 to the draft notification under Sections 3 and 4 of the Bihar Municipal Act, 2007 and hence the Government was quite justified in preparing and publishing notification u/s 6 of the Bihar Municipal Act, 2007 specially when the people of the area had themselves approached the authorities for constitution of Nagar Parishad.

25. learned Counsel for the said interveners also claimed that census report of 2001 shows 75 per cent of the entire population to be non-agriculturists in support of which he produced Annexure-I/3 to his supplementary affidavit dated 21.4.2010. He further claimed that Benipur Nagar Parishad had Sub-Treasury, Jail, Nationalized Banks, Indian Oil Retail Outlet, Sub-Registry Office, Bahera Police Station, Five kilometers of uniform market on both sides of the road, Bar Council, Courts of Law, Market Hub, High Schools, Colleges, Hospitals, Telephone Services, Small Scale Industries, Public Stadium, Kerosene Depot and several offices of companies, etc. He further averred that the term ''non-agriculturists'' is defined in Clause 90 of the Anudesh Pustika issued by Central Government for the purposes of census. Hence, he argued that the acts of the authorities concerned were quite legal and justified.

26. learned Counsel for the applicant of I.A. No. 6339 of 2010, who has been impleaded as Respondent No. 11, also contested the claim of the Petitioners on the ground that the population chart prepared by the authorities concerned clearly showed that more than 75 per cent of the population was based on non-agricultural activities and there was a presumption of correctness to the Government document unless contrary is proved. Hence, the provision of Section 3(iii) of the Bihar Municipal Act, 2007 has been fully satisfied and there is nothing to disprove the documents of the authorities. He further claimed that the transition of the area from Gram Panchayat to Nagar Parishad was as per the resolution of general people of the area including the Petitioners, whereafter some of the Petitioners themselves fought election of Nagar Parishad and lost, due to which only they filed the instant writ petition. He further relied upon a decision of this Court in case of Raghunath Pandey and Others Vs. The State of Bihar and Others, and averred that in any view of the matter Petitioners have not come with clean hand and their writ petition is fit to be dismissed.

27. Considering the aforesaid arguments raised by learned Counsel for the respective parties as well as the materials brought on record, it is quite apparent that three points are involved, which are to be considered and decided in both these cases. They are as follows:

(A) Whether some of the Petitioners themselves having contested the election of Benipur Nagar Parishad, are precluded from raising any objection to the formation of the Nagar Parishad?

(B) What should be the basis for fixing the population of the area concerned, including urban population and rural population, for creation of Nagar Parishad?

(C) Whether the procedures adopted by the authorities were in accordance with

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the provisions of law prescribed in the Bihar Municipal Act, 2007?

28. So far Point (A) is concerned, it is not in dispute that a couple of Petitioners of the first writ petition had contested the election of Benipur Nagar Parishad held in the year 2010, but admittedly the remaining Petitioners of the first writ petition (C.W.J.C. No. 1297 of 2010) as well as the sole Petitioner of the second writ petition (C.W.J.C. No. 4039 of 2010) had not contested the election of Benipur Nagar Parishad nor had taken part in any of the activities of the authorities for creation of Benipur Nagar Parishad. In the said circumstances, the aforesaid objection raised by the Respondents is not sustainable in law and it cannot be legally held that these two writ petitions are not maintainable due to the aforesaid facts.

29. So far Point (B) is concerned, the term "population" is defined u/s 2, Sub-Section 74 of the Bihar Municipal Act, 2007 which provides that "population means the population as ascertained at the last preceding census of which the relevant figures have been published". Same definition finds place in Article 243(f) and Article 243P(g) of the Constitution of India. It is an admitted fact that the last preceding census was held in the year 2001 and since then neither any population had been ascertained in accordance with law nor the relevant figures have been published. The Respondents have also completely failed to produce any fresh census or publication before this Court.

30. The Respondents have relied upon a couple of reports of authorities regarding population. One is report dated 24.10.2008 (Annexure-C to I.A. No. 2666 of 2010) submitted by Sub-Divisional Officer, Benipur to the District Magistrate, Darbhanga holding that the population of the Nagar Parishad would be 62,203 out of which 48,000 people were involved in non agricultural activities. The other report is of the District Magistrate, Darbhanga on the form (Annexure-3 at page 18 of the writ petition) which was annexed to letter dated 23.10:2008 (Annexure-3) issued by the Deputy Secretary-cum-Director, Urban Development and Housing Department, Govt. of Bihar to the District Magistrate, Darbhanga which showed that the total population of the proposed Nagar Parishad was 2,03,000 out of which 48,000 were dependent upon non-agricultural occupation and it was assumed to be more than 75 per cent of the total population. No material at all has been produced by the Respondents which supported the said reports. The said reports are self-contradictory also as 48,000 out of 2,03,000 can never be 75 per cent rather it will be less than 24 per cent which is not sufficient for creation of any Nagar Parishad as per the provisions of Sections 3 and 7 of the Bihar Municipal Act, 2007.

31. The population of the area of the proposed Nagar Parishad is admittedly about 2,00,000 as is also apparent from the population of 24 villages included in the Notification No. 1691 dated 20.5.2009 (Annexure-4) issued by the Urban Development and Housing Department under the provision of Section 6 of the Bihar Municipal Act, 2007. Furthermore, there is no report showing that non-agricultural population of the entire area was about 1,50,000 which would be 75

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per cent of the entire population. In the said circumstances, no reliance can be placed upon the said reports and mere enumeration of Government and business activities cannot legally satisfy the specific provisions of law, which requires a published census. Furthermore the work of fresh census is in progress and is going to be completed within a year and hence there was no occasion for creation of the new Nagar Parishad in such a haste-post-haste manner.

32. In any view of the matter, there is no provision either in the Constitution of India or in the Bihar Municipal Act, 2007 or even in the Bihar Panchayat Raj Act, 2006 or in any other law for attaching any importance to such reports, nor such reports can legally be equated with ascertainment of population in census duly published in accordance with law. Thus, it is quite apparent that for the purposes of any action taken by the authorities concerned under the provisions of the Bihar Municipal Act, 2007, the basis for fixing the population of the area concerned, including urban population and rural population would be the last preceding census of 2001 until the population is ascertained afresh in a duly held census by the authorities concerned and the relevant figures are published in accordance with law.

33. So far Point (C) is concerned it involves the entire scheme of the system of Local Self-Government introduced in the Constitution by 73rd and 74th Amendment Acts of 1992 which came into effect from 24.4.1993 and 1.6.1993 respectively. By the said Amendments Part-IX and Part-IX-A were added in the Constitution of India dealing with Panchayats and Municipalities to be established as recognized systems of Local Self-Government. Articles 243 to 243-0 under Part-IX of the Constitution provides various features, aspects and intrinsicalities of Panchayats, whereas Articles 243-P to 243-ZG under Part-IX-A of the Constitution provides various features, aspects and intrinsicalities of Municipalities.

34. Article 243B of the Constitution of India provides that there shall be constituted in every State Panchayat at the village, intermediate and District levels in accordance with the provisions of Part-IX of the Constitution. However, in the Bihar Panchayat Raj Act, 2006, the Panchayats at Village level, Intermediate level and District level were termed as "Gram Panchayat, Panchayat Samiti and Zila Parishad" respectively as per Section 11 (Chapter-III), Section 34 (Chapter-IV) and Section 62 (Chapter-V) of the said Act. Gram Panchayat has to be constituted of a village or group of contiguous villages or part thereof with a population within a territory as nearly as 7,000. Panchayat Samiti has to be constituted for every Block and its jurisdiction has to be over all the villages in that Block. Zila Parishad is to have jurisdiction over the entire District excluding such portion of the District which is included in or under the authority of Municipality or cantonment Board constituted under any law.

35. Article 243Q of the Constitution of India provides that there shall be constituted in every State, Municipalities at three levels, namely Nagar Panchayat, Municipal Council (Nagar Parishad) and Municipal Corporation in

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accordance with the provisions of Part-IX-A of the Constitution. However, in the Bihar Municipal Act, 2007, classification of Municipal areas has been detailed in Sections 3 and 7 thereof, according to which Nagar Panchayat is the smallest one concerning an area in transition from a rural area to an urban area (small town) having a population between 12,000 and 40,000. A Municipal Council which is also called Nagar Parishad is a medium urban area having a population between 40,000 and 2,00,000. Municipal Corporation consists of a larger urban area having a population of 2,00,000 or more.

36. In the aforesaid facts and circumstances, it is quite apparent that Constitution of India provides six tiers of Local Self-Government mentioned above out of which the first three are basically rural in nature, whereas the last three are basically urban in nature. The factor which determines the rural area and urban area is the percentage of the population dependant upon non-agricultural activities which is quite apparent from the Proviso to Section 3 of the Bihar Municipal Act, 2007 which provided that "non-agricultural population in all cases shall be 75 per cent or more" and hence only on that basis the State Government has to determine as to whether a specific area would come under the purview of Panchayats or would come under the purview of Municipalities.

37. From the entire scheme as provided in Part-IX and Part-IX-A of the Constitution of India followed by the Bihar Panchayat Raj Act, 2006 and Bihar Municipal Act, 2007, a systematic upgradation of the area from one level to another has been provided, i.e. from Panchayat to Nagar Panchayat which is with respect to the area in transition from a rural area to an urban area and only thereafter if the required population and percentage of non-agricultural population are fulfilled, the area can be developed into a Municipal Council (Nagar Parishad). In the said circumstances, there is no provision to support the act of the Government for declaring an area to be Municipal Council (Nagar Parishad) directly from Gram Panchayat all of a sudden in one go without the area having ever been constituted as a Nagar Panchayat.

38. Furthermore, if the Government decides to create a Municipality by amalgamating some Gram Panchayats it has to declare its intention after considering various parameters provided in Section 3 of the Act and to obtain the consent of the Gram Panchayats concerned and only then it can make draft publication of notification u/s 4 of the Bihar Municipal Act, 2007. The said notification has to be published in the official Gazette and in at least two leading newspapers and a copy of the notification has to be pasted at a conspicuous place in the office of the Collector of the District or in the office of the Municipality and also to give information thereof by beat of drum throughout the local area concerned. Section 5 of the Bihar Municipal Act, 2007 provides opportunities to the inhabitants to submit their objection in writing to the State Government within one month from the date of draft publication of notification u/s 4 of the Bihar Municipal Act, 2007 and the State Government is to take such objection into consideration and only thereafter final publication of notification u/

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s 6 of the Act can be made constituting a Municipal area under the Act.

39. In the instant case, although notifications under Sections 4 and 6 of the Bihar Municipal Act, 2007 have been produced by the authorities concerned, but there is no material at all to show that consent of the Gram Panchayats concerned had ever been sought to be obtained by the authorities concerned before publication of the draft notification u/s 4 of the Bihar Municipal Act, 2007. Furthermore, no document has been produced by the authorities concerned that the provision of Section 4 and its Sub-section has been followed as there is nothing to show that draft notification had been published in two newspapers or it had been pasted at the required places or any beating of drum was made. Although one of the Respondents had claimed that some objections had been received u/s 5 of the Act in response to the draft notification but that has been denied and no admitted or reliable document has been produced either to show that any objection was filed or was ever decided by the authorities concerned. However, the entire circumstances of the case, including the letter of Secretary, Urban Development and Housing Department, Govt. of Bihar to the District Magistrate, Darbhanga dated 23.10.2008 (Annexure-3) showed that the notifications were issued merely on the wishes of the concerned Minister for reasons best known to him. In the aforesaid facts and circumstances, it is quite apparent that the draft notification u/s 4 of the Bihar Municipal Act, 2007 as well as the final notification u/s 6 of the Act with respect to constitution of Municipal area have not been published in accordance with law after fulfilling the statutory requirements.

40. *So far the case law relied upon by learned Counsel for the Respondents is concerned, the decision of a Division Bench of this Court in case of Sangita Devi (supra) is with respect to transition of a Panchayat Samiti to a Nagar Panchayat in which the authorities had been able to prove that 77 per cent of the total population were non-agriculturist. This is not the case in the instant matter. In case of Shree Krishna Prasad Singh and Ors. and Ors. analogous cases (supra), the Full Bench of this Court had considered the various provisions of the Bihar Municipal (Amendment) Ordinance, 1978 and the principle involved therein in the facts of that case, but in the instant case the facts and the principle are completely different and are governed by the specific provisions of the Bihar Municipal Act, 2007 which has been enacted in view of the specific provision of Part-IX-A of the Constitution of India. In case of Raghunath Pandey and Ors.s alongwith other analogous cases (supra), a Division Bench of this Court considered the provisions of the Bihar Municipal Corporation Act, 1978 which was with regard to alteration of existing boundaries for the formation of a Municipal Corporation out of existing Municipalities. In the said provision the question of percentage of urban population had not been made as it has been specifically made in the Bihar Municipal Act, 2007 which is applicable to the instant case. Similar is the matter in the decision of the Apex Court in case of Bhaskar Textile Mills (supra) as well as in the decision of this Court in case of Sheonath Rai and Ors. (supra). In the aforesaid facts and circumstances, the abovementioned

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decisions which have been relied by learned Counsel for the Respondents are not applicable to the facts and circumstances of this case.

41. So far the various decisions of the Apex Court in case of Tata Cellular (supra), in case of Anugrah Narain Singh and Ors. (supra), in case of Balco Employees'' Union (Regd.) (supra) and in case of Damoh Panna Sagar Rural Regional Bank and Anr. (supra) are concerned, they are all referred by learned Counsel for the Respondents on the scope and jurisdiction of the High Court with respect to judicial review of the decisions made by the authorities concerned. No doubt, this Court cannot examine the relative merits of different policies and cannot strike out a policy of the Government merely on the ground that another policy would have been fairer and better, but when the decision/action of the Government is contrary to the statutory provision and the Constitution and is vitiated by arbitrariness, unfairness, illegality, irrationality, this Court is duty bound to pass appropriate orders in that regard as has been provided in the aforesaid decisions of the Supreme Court. In the said circumstances, the aforesaid decisions relied upon by learned Counsel for the Respondents, in fact, support the claim of the Petitioners, who are challenging the decision making process of the authorities in the aforesaid matter which was clearly against the specific provision of the Bihar Municipal Act, 2007 and the Constitution of India.

42. Considering the entire facts and circumstances of the case as well as the specific provisions of law and the case laws, this Court has no option but to quash draft notification dated 20.1.2009 (Annexure-2) as well as final notification dated 20.5.2009 (Annexure-4) issued by the authorities concerned under the provisions of Sections 4 and 6 of the Bihar Municipal Act, 2007 constituting Benipur Nagar Parishad (Municipal Council) and also consequential steps and directions of the authorities concerned including letters dated 17.12.2009 and 16.12.2009 (Annexures-5 and 6). Accordingly, they are quashed and these writ petitions are allowed. The Gram Panchayats which were existing from before would continue to operate as per the provisions of the Panchayat Raj Act, 2006 as if their areas were not altered and amended.

43. However, if the next census is duly published and fulfils the requirement and criterion as fixed by law, the State Government will be at liberty to take fresh steps for creation of Nagar Panchayat/ Nagar Parishad after following the procedure prescribed in the relevant enactments and the observations made above.

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