

(1971) 10 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jur. Case No. 2035 of 1970

Baikunth Nath Upadhyaya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-1971

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 388(1), 6

Bihar Panchayat Raj Act, 1948 — Section 1(2)

Bihar Panchayat Samiti and Zila Parishad Act, 1961 — Section 1(2)

Citation : AIR 1972 Patna 307

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Thakur Prasad and Birendra Nath, for the Appellant; Tara Kant Jha and Dineshwar Prasad Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.N.P. Singh, J.—The petitioner is the Pramukh of Namkun (Khijri) Pan-chayat Samiti is the district of Ranchi. He has filed this writ application for quashing Notification No. 8220 L. S. G., dated the 27th of November, 1970, purported to have been issued by the Government of Bihar under Clause (c) of Section 6 of the Bihar and Orissa Municipal Act, 1922. A copy of the said notification has been made Annexure "1" to the writ application. By the impugned notification a number of villages either in whole or in part have been included within the Doranda Notified Area.

2. As stated in the writ application, Namkum Panchayat Samiti consists of twenty Gram Panchayats which were constituted by various notifications of the Bihar Government in or about the year 1950. All the twenty Gram Panchayats were brought under the jurisdiction of the Namkum Block Samiti in the year 1964 when the Bihar Panchayat Samitis and Zila Pari-shads Act, 1961 hereinafter to be called "Bihar Act 6 of 1962", came into force in the district of Banchi. It is said that on the 16th of January, 1964, the first Panchayat Samiti of Namkum Block

was elected and after the expiry of its term the election of office bearers of the said Samiti was held in June 1967 in which the petitioner was elected the Pramukh. As provided u/s 5 of Bihar Act 6 of 1962, the Panchayat Samiti consists of the Mukhiyas of all the twenty Gram Panchayats, the representatives of Co-operative Societies and other institutions and certain individuals.

The petitioner, in the capacity of the Pramukh of Namkum Panchayat Samiti, has challenged the validity of the notification mainly on the ground that the Panchayat Samiti was not consulted before the villages in whole or in part were excluded from the Block and were included in the Notified Area. The validity of the notification has further been challenged on the ground that there has been contravention of the provisions of Section 3 (3) of the Bihar Panchayat Raj Act, 1947, hereinafter to be called "Bihar Act 7 of 1948", because the State Government altered the local limits of the jurisdiction of the various Gram Panchayats by excluding villages or parts of the villages without ascertaining the views of the people of the area affected by such alteration. In course of his argument, Mr. Thakur Prasad, learned counsel appearing for the petitioner, raised another contention relating to the validity of the notification. He submitted that the State Government has no power to include any area to the Notified Area already constituted u/s 388 of the Bihar and Orissa Municipal Act, 1922.

3. I will first deal with the main ground on which the validity of the notification has been challenged. Chapter II of Bihar Act 6 of 1962 provides for constitution, incorporation, composition etc. of the Panchayat Samitis. u/s 3 (1) of that Act the State Government has been empowered (a) to declare any area within a particular district to be a Block and name the Block, (b) to include any area within the same district in a Block so declared, (c) to exclude any area from any such Block, or (d) to transfer any area from one Block to another within the same district. By Bihar Act 4 of 1964 a proviso has been added to Section 3 (1) which reads as under:

"Provided that before issuing any notification under" Clause (b), (c) or (d), the State Government shall consult the concerned Panchayat Samiti and Zila Parishad, if any, and where no Panchayat Samiti for any Block or Zila Parishad for the district has been constituted, the concerned Block Development Committee and the District Development Committee, if any, constituted under the orders of the State Government."

Mr. Thakur Prasad submitted that before excluding any area from a Block it is incumbent on the State Government to consult the Panchayat Samiti of the Block concerned. As in the instant case the State Government did not consult the Namkum Panchayat Samiti before excluding various villages either in whole or in part from the Block and including them in the Doranda Notified Area, there has been a contravention of the mandatory provisions as contained in the proviso to Section 3 (1) of Bihar Act 6 of 1962. There does not appear to be any substance in the contention raised.

A plain reading of Section 3 (1) of Bihar Act 6 of 1962 would show that the State Government has to consult the concerned Panchayat Samiti before excluding any area from a Block for the purposes of the Act. In the instant case there has been no notification by the Government excluding any area from the Namkum Block for the purposes of Bihar Act 6 of 1962 and as such the State Government was under no obligation to consult the Namkum Panchayat Samiti. The provisions of Bihar Act 6 of 1962 are not attracted when an area has been constituted a Municipality or a Notified Area under the provisions of the Bihar and Orissa Municipal Act, 1922. This is clear from the proviso to sub-section (2) of Section 1 of Bihar Act 6 of 1962, which reads as under:

"Provided that save as otherwise expressly obtained in this Act nothing therein shall apply to any local area to which the provisions of the Fatna Municipal Corporation Act, 1951 (Bihar Act 13 of 1952), apply or any area which has been or may hereafter be constituted a Municipality or a Notified Area under the provisions of the Bihar and Orissa Municipal Act, 1922 (B. 6 Order Act 7 of 1922), or a Cantonment under the provisions of the Cantonment Act, 1924 (Act 2 of 1924)."

The notification, therefore, cannot be held to be invalid on the ground that the State Government did not consult the Namkum Panchayat Samiti before issuing the same.

4. The second ground on which the validity of the notification has been impugned is equally without substance. Section 3 (3) of Bihar Act 7 of 1948 reads as under:

"Provided that before making any alteration in the local limits of the jurisdiction of any Gram Panchayat, the Government shall, in the prescribed manner, ascertain the views of the people of the area affected by such alteration."

In the instant case the Government has not issued any notification u/s 3 (3) of Bihar Act 7 of 1948 excluding any village or part of a village from any Gram Panchayat, thereby making an alteration in the local limits of the jurisdiction of that Gram Panchayat. It was, therefore, not necessary for the Government to ascertain the views of the people of the area affected by such alteration. As provided under sub-section (2) of Section 1 of Bihar Act 7 of 1948, the provisions of that Act are not applicable to an area which has been or may be constituted a municipality or a notified area under the provisions of the Bihar and Orissa Municipal Act, 1922, hereinafter to be called "the Act", The State Government was, therefore, under no obligation to consult the views of the people of the area as required by the proviso to Section 3 (3) of Bihar Act 7 of 19-18 before issuing the notification under the provisions of the Act. For the foregoing reasons I am of the view that there is no substance even in the second contention.

5. Now remains to consider the last contention which has been raised by Mr. Thakur Prasad, namely, that the State Government has no power to include any area in the Notified Area which was already constituted u/s 388 of the Act. The provisions with regard to the Notified Areas are contained in Chap. XIV of the

Act. This charter consists of only three Sections 388, 389 and 390. The provision with regard to the constitution of notified area is contained in Section 388 which runs as under:

"(1) The State Government may by notification declare that it is necessary to make administrative provision for all or any of the purposes of this Act in any area specified in the notification, other than a municipality or a cantonment.

(2) An area in respect of which such a notification has been issued is hereinafter called a notified area.

Under Section 389 the State Government has been empowered to impose taxation in, apply any provisions of the Act etc. to and constitute committees in, a notified area. Section 389 reads as follows:

"The State Government may by notification-

(a) apply or adapt to a notified area or to any part of a notified area any provision of this Act which may be applied to a municipality, or any rule or by-law in force or which can be made in any municipality under this or any other Act:

(b) impose in a notified area or in any part of a notified area any tax which could be imposed by the Commissioners if the notified area were a municipality; and

(c) appoint or make rules for appointment or election of a committee to carry out the purposes of this Act in the notified area."

Section 390 is not important for our present purpose. As I have already indicated, the impugned notification is purported to have been issued by the Government in exercise of the power conferred upon it under Clause (c) of Section 6 of the Act.

6. The first point which falls for consideration is whether the State Government had power to include any area within the Doranda Notified Area under cl. (c) of Section 6 of the Act. It appears that by Notification No. 1956-L.S.G. dated the 18th February, 1924, issued under subsection (1) of Section 388 of the Act the Doranda Notified Area was constituted. Another notification bearing No. 5264-L.S.G. dated the 23rd May, 1924, was issued by the Government under Clauses (a) and (c) of Section 389 of the Act applying to the notified area of Doranda certain provisions of the Act which were set forth in the schedule annexed to that notification and appointing a committee to carry out the purposes of the Act in the said area. In the schedule annexed to the notification Sections 4, 5 and 6 are not mentioned. These two notifications were produced before us by Mr. Tara Kant Jha, learned Standing Counsel No. 2, at the time of the hearing of the application. No other notification by the State Government showing that the provisions of Sections 4, 5 and 6 of the Act have been made applicable to the Doranda Notified Area was produced before us on behalf of the State. The provisions of Sections 4, 5 and 6 were, therefore, not applicable to Doranda Notified Area and the State Government was not empowered to include any area

in the Doranda Notified Area in exercise of its power under Clause (c) of Section 6 of the Act. This position was fairly conceded by Mr. Tara Kant Jha. He, however, submitted that the State Government was competent to extend the area of Doranda Notified Area in exercise of its power under sub-section (1) of Section 388 itself.

7. The next point, therefore, which arises for consideration is whether it was within the power of the State Government Under Sub-section (1) of Section 388 to include an area in a notified area already constituted. Under Sub-section (1) of Section 388 the State Government has been given wide power to make administrative provisions for all or any of the purposes of the Act in any area specified in the notification. The only limitation which has been placed is that the area should not be a municipality or a cantonment. It is not disputed and indeed it cannot be disputed that the State Government can reconstitute a notified area by issuing a fresh notification and by including more area in the notified area. It has, therefore, to be held] that it is within the competence of the! State Government to extend the area of a notified area. The source of power, however, is not to be found in Clause (c) of Section 6 of the Act but in Sub-section (1) of Section 388 itself. It is a well-settled principle that where an authority passes an order which is within its competence, the fact that the order is purported to have been made under a wrong provision will not render the order invalid. Reference may be made to the cases of *P. Balakotaiah Vs. The Union of India (UOI)* and *Others*, and *Afzal Ullah Vs. The State of Uttar Pradesh*, .

8. For the foregoing reasons I accept the contention of Mr. Tara Kant Jha and hold that the State Government was competent to include the area under Subsection (1) of Section 388 itself within the Doranda Notified Area. I further hold that the notification cannot be held to be invalid merely because a wrong source of power has been given in it and it is purported to have been issued under Clause (c) of Section 6 of the Act, Thus, the last contention which has been raised by Mr. Thakur Prasad also fails.

9. In the result, the application fails and it is accordingly dismissed; but, in the circumstances of the case, there will be no order as to costs.