
(2011) 02 PAT CK 0083
In the Patna High Court
Case No : CWJC No. 14585 of 2009

Dr. Anand Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Bihar Municipal Act, 2007 — Section 3, 4, 5

Citation : (2011) 2 PLJR 423

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. The Petitioner questions the final Notification No. 1688 dated 20.5.2009, by which the erstwhile Bihta Gram Panchayat has been declared as the Bihta Nagar Panchayat.

3. The Petitioner in his pleading makes specific assertions that the requirements of Sections 3, 4 and 5 of the Bihar Municipal Act have not been complied with. It is submitted that the draft notification was not published in the manner required by Section 4, much less ever published at all and therefore objections could not be filed.

4. Counter affidavit has been filed on behalf of Respondents. Learned Counsel for the State strenuously sought to convince the Court that the final notification does refer to a draft notification dated 20.1.2009 bearing No. 131. He therefore submits that prima facie there has been application of mind. The conversion from Gram Panchayat to Nagar Panchayat was basically a matter of executive policy to be done after satisfaction of the conditions as provided for in Section 3 of the Bihar Municipal Act, 2003 (sic-2007?).

5. While there can be no quarrel with the proposition that it is basically an executive policy matter, the Court is concerned with the decision making process, especially, when it is regulated by statutory requirements. If the statute provides a particular mode of performance other modes of performance are necessarily forbidden. Any act in violation of the statutory provisions becomes unsustainable in law.

6. The counter affidavit baldly states that draft notification was published on 21.1.2009 (read as 20.1.2009). There is no statement in the counter affidavit of the manner in which it was published much less any compliance with the statutory requirements of Section 4 of the Act. If that were not enough, the final notification does not even mention that either no objections were received, or that those received were considered. Though an attempt has been made on behalf of Respondents to supplement the notification by stating in the counter affidavit that no objections were filed, the Court rejects the contention. The final notification itself had to state that either no objections had been received or that objections received were considered. No counter affidavits can add words to the notification which do not exist in the notification itself. The final notification dated 20.5.2009 declaring Bihta Nagar Panchayat is therefore unsustainable. It is accordingly set aside.

7. This shall be without prejudice to the Respondents to proceed afresh in accordance with law, if so advised.

8. The writ application stands allowed.