
(2015) 07 PAT CK 0053

In the Patna High Court

Case No : Letters Patent Appeal No. 815 of 2010 in Civil Writ Jurisdiction Case No. 677 of 2010, Letters Patent Appeal No. 801 of 2010 in Civil Writ Jurisdiction Case No. 677 of 2010, Letters Patent Appeal No. 1370 of 2010 in Civil Writ Jurisdiction Case No. 9378 o

Kaniz Raja and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Bihar Municipal Act, 2007 — Section 3
Constitution of India, 1950 — Article 243-Q, 243-Q(1)(b)

Citation : (2015) 07 PAT CK 0053

Hon'ble Judges : V.N. Sinha, J; Nilu Agrawal, J

Bench : Division Bench

Advocate : Rajiv Roy, GP-5, Suresh Kumar, AC to GP-5, Sunil Kumar, AC to AAG-6 and Subodh Kr. Mishra, AC to GP-7, for the Appellant; S.R. Shahi, Rabindra Kumar Tiwary, S.B.K. Mangalam and Ravi Parmar, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.

1. Heard learned counsel for the Appellant State and the counsel for the Respondent writ petitioners.

2. This batch of Letters Patent Appeal arise out of order dated 26.03.2010, passed by the learned Single Judge of this Court in C.W.J.C. No. 677 of 2010 and other analogous matters whereunder notification of the Government dated 26.05.2009 declaring Purnea Municipal Council (hereinafter referred to as the Council) into Purnea Municipal Corporation (hereinafter referred to as the Corporation) has been quashed holding that the area included within the boundary limits of the Council to enable the Council to become Corporation does not have the required 70% urban population. In this connection, learned Single

Judge has referred to sub-clause-(2) of Article 243-Q of the Constitution and sub-section (1) of Section 3 of the Bihar Municipal Act, 2007(hereinafter referred to as the Act) which has been enacted to give effect to the aforesaid constitutional provisions of Part IX-A of the Constitution. Learned Single Judge having considered the reports received from the District Magistrate, Purnia contained in Letter No. 84 dated 14.02.2009 and from the Executive Officer of the Council contained in Letter No. 213 dated 17.02.2009, Annexures- 2A, 2 to L.P.A. No. 1429 of 2010 recorded such finding, as from the aforesaid reports he was satisfied that urban population of the six Gram Panchayat(s) which is to be included within the municipal limits of the Corporation as per 2001 census is 35,792 and less than 75% of its total population is engaged in pursuits which is non-agricultural. Learned Single Judge having considered the two reports also concluded that population of the Council engaged in non-agricultural pursuit is 01,24,487 which is 60% of its total population 01,71,687 and in support of his conclusion referred to entries in serial No. 9 of the report dated 14.02.2009. In this connection, he also overruled the report of the Executive Officer of the Council dated 17.02.2009 which clearly stated with reference to entry in serial No. 9 of the report dated 14.02.2009 that non-agricultural population of the Council is erroneously computed in serial No. 9 as 60% and not 75%.

3. Learned counsel for the State submitted that population of the Council as per 2001 census is 1,71,687 which is evident from column No. 6(ka) of the report dated 14.02.2009 any part whereof cannot be taken as non-agricultural population as the area itself has been declared as Council, meaning thereby smaller urban area as per Article 243-Q(1)(b) or medium urban area as per subsection (1) of Section 3 of the Act. The population of five Gram Panchayat(s) which is to be included within the limits of Council being 35,792, 75% of that population being engaged in non-agricultural avocation as is evident from report dated 17.02.2009, Annexure-2 of the Executive Officer of the Council, in appreciation of such fact the Government proposed to include the said area in the Council to enable the Council to become Corporation and as the population of the Corporation after inclusion of five Gram Panchayat(s) has become 2,07,479, none chose to submit any objection to the proposal, the Government proceeded to notify the area as Corporation, which is for the benefit of the residents residing within the area.

4. Counsel for the writ petitioners questioned the aforesaid submission with reference to the provisions contained in sub-clause (2) of Article 243-Q of the Constitution, second proviso to sub-section (1) of Section 3 of the Act and submitted that in terms of the constitutional, statutory provision the area which is to be included as part of the transitional, smaller, medium, large urban area must have non-agricultural population of 75% or more. Learned counsel further submitted that five Gram Panchayat(s) which is proposed to be included within the Council has population of 35,792 and the population engaged in non-agricultural pursuit should be more than 75% of 35,792 which is only 60% as is evident from report dated 14.02.2009, Annexure-2A.

5. Having heard learned counsel for the parties as also having gone through the two reports submitted by the District Magistrate, Purnea and the Executive Officer of the Council dated 14.02.2009, 17.02.2009, it is quite evident that the Council had 1,71,687 population as per 2001 census which was less than the population required for declaring that area a Corporation. Government having considered the nature and the non-agricultural pursuit of the population residing in the adjoining five Gram Panchayat(s) having total population of 35,792 of which 60% populace as per report of the Collector dated 14.02.2009, Annexure-2A were engaged in pursuits other than agriculture. Executive Officer of the Council, however, reported under report dated 17.02.2009, Annexure-2 that 75% population of the adjoining Gram Panchayat is engaged in pursuits other than agriculture. The Government sought objection from the people, as has been averred in paragraphs 4, 5 of the counter affidavit, but none submitted any objection and Government chose to notify the Council into Corporation by including five Gram Panchayat(s) as thereby the population of the entire area notified as Corporation became more than two lakhs.

6. The submission of the learned counsel for the writ petitioners that 75% population of the area, which is proposed to be included within the Council, must be engaged in non-agricultural pursuit, is misplaced in view of the fact that it is the population of the entire area which is now to be constituted as Corporation is to be considered for the purpose of first proviso to sub-section (1) of Section 3 of the Act. Total population of Corporation is 2,07,479, out of which 1,71,687 is the population of the Council, as such, after inclusion of the five Gram Panchayat(s) with 35,792 population in the Council the total population of the Corporation engaged in pursuits other than agriculture is much more than 75%.

7. In view of our discussion in paragraphs 5, 6 above, we do not find any error in the notification of the Government notifying Council into Corporation. The contrary view taken by the learned Single Judge is not in accordance with the constitutional provision and the law made to effectuate the constitutional provision as also report of the Executive Officer dated 17.02.2009, Annexure-2, as such, we have no option but to set aside the order dated 26.03.2010, which is, accordingly set aside. The appeals are allowed, however, there shall be no order as to costs.