

(1976) 05 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 723 of 1976

Shivadhar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-05-1976

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 388, 389, 4, 5, 6

Citation : AIR 1977 Patna 50 : (1977) 25 BLJR 35

Hon'ble Judges : S.K. Choudhuri, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Shyam Nandan Pd. Sharma and Amrendra Kumar Singh, for the Appellant; S.B.N. Singh, Govt. Pleader No. 2, Uma Shankar Singh and Jugal Prasad, for the Respondent

Judgement

1. The petitioners have obtained a rule from Court as to why the two notifications dated 3-2-1976 contained in Annexure "3" and the other dated 4-2-1976 contained in Annexure "2" issued by the State of Bihar acting in exercise of the powers under Sections 388 and 389 of the Bihar and Orissa Municipal Act, (briefly the Act) respectively, be not quashed and cancelled.

2. The State of Bihar earlier had issued a draft notification u/s 388 (1) of the Act on 26-6-1973 to constitute a notified area known as "Maner Notified Area" comprising seven villages, namely, (1) Maner, (2) Sarai Maner, (3) Ahiyapur Maner, (4) Nahinawan, (5) Mohanpur, (6) Mahopur and (7) Geyaspur, as mentioned in the said notifications issuing objections and suggestions from the persons likely to be affected and suggesting application of various provisions of the Act mentioned in the Schedule of the Act such as Sections 8 to 10, 21, 23, 25, 27, 29 to 33 and 34. 35, 50 (removal of the vice-chairman) and various other provisions which need not be mentioned. On 4-2-1976 the Government of Bihar issued another notification (Annexure "2") in the exercise of the powers u/s 388 of the Act declaring the constitution of a notified area consisting of only the first five villages mentioned in the draft notifications with boundaries in a

schedule attached thereto which were formed into a Notified Area Committee.

3. By the other notification dated 3-2-1976 (Annexure "3") the State of Bihar in exercise of the powers u/s 389 (c) appointed a Committee for carrying out the purposes of the notified area consisting of as many as 39 members.

4. The case of the petitioners is that the first notification (Annexure "2") is bad in law on the ground that while altering the boundaries of the notified area as originally prepared, the State Government did not ascertain the views of the residents of the villages which were sought to be included in the earlier notification (Annexure "1"). The second notification (Annexure "3") appointing the Committee is challenged on the ground that it was published even earlier than the formation of the notified area and, therefore, was invalid.

5. We shall take up for consideration the first notification dated 4-2-1976 (Annexure "2"). As already stated earlier, this notification is challenged, on the sole ground that the proposed boundaries of the notified area were altered under order ascertaining the views of the two villages. For constituting a notified area the State Government has been empowered to make declaration by a notification, if it thinks necessary, to make administrative provisions for all or any of the purposes of this Act in any area specified in the notification, other than a municipality or a cantonment.

6. From the above provision under which a notified area may take its birth, it is abundantly clear that in issuing such a declaration, the State Government has in its wisdom to take a decision as to whether it is necessary to make any administrative provision for any particular area for all or any of the purposes of the Act. The language used in Section 388 (1), in our view is unqualified and does not call for hearing any objections or ascertaining the views of the persons of the area in the matter. The argument seems to be based on the provisions contained in Sections 4 to 6 of the Act dealing with the creation of municipalities. u/s 4 the State Government takes a decision if the conditions laid down u/s 4 (1) (a) are satisfied, to constitute any town or area as a Municipality and necessary declaration is to be published in the official gazette. u/s 5 the State Government is to take into consideration any objection submitted by any inhabitant of the town or area under the procedure prescribed in this Section. The object of these provisions, is to ascertain the view of the residents of the area and hear their objections or suggestions, inasmuch as the constitution of a municipality is likely to expose them in various obligations appertaining to taxation and other impositions. But the same provisions cannot as a matter of course be applied or followed in the case of notified areas. If the State Government intended to hear any such objection, it might be only as a matter of indulgence but certainly could not be under any legal obligation. If this be so, on the failure of the State Government to follow the said procedure, no rule can be issued by this Court to compel the State Government to follow the same.

7. This argument, however, must fail on another ground as well. Even assuming

that the provisions of Sections 5 and 6 of the Act applied to the case of a notified area; in our view, by omitting any village from the earlier proposed notified area intended to be brought in by the draft notification, no prejudice can be said to be caused to the residents or inhabitants of those villages, and, therefore, it cannot be a case of violation of any of the principles in the nature of natural justice. In any case our view finds full support from a Bench decision of this Court in *Ramchandra Prasad v. State of Bihar* 1967 BLJR 491 . We, therefore, do not find any merit in this point and the notification dated 4-2-1976 cannot be held to be invalid on this account.

8. Now we come to the next notification dated 3-2-1976 (Annexure "3"). It has been seen that the State Government had already taken a decision to constitute the Maner Notified Area Committee and it was published as far back as on 27th June, 1973. Admittedly, no objection was filed on behalf of any person to the said proposal and therefore, the State Government had decided to make a final declaration of constituting the villages in question in a notified area. We have looked into the originals of the two notifications produced by the learned Government Pleader No. 2. It appears that the State Government had passed the necessary order for formation of the notified area, in question, on 2nd February, 1976 itself and the next notification constituting the committee on 3rd February, 1976. The State, therefore, constituted the committee after it had taken the final decision to constitute the Maner Notified Area and not earlier, but in making the publication in the Official Gazette it was made in a reverse order. But nonetheless, the moment the notifications were published, they became enforceable and operative. Apart from the above facts that we find from the record, we do not see any force in this contention as has been advanced before us on its merit either, namely that the notification dated 3-2-1976 appointing the Committee would be rendered invalid simply because the notification constituting the notified area was made a day later. If the State Government takes a decision to constitute an area as notified area, simultaneously it can also decide to appoint the Committee and if the notification appointing the Committee is published a little earlier, the only effect will be that the Committee would assume charge after the notified area is properly constituted by a declaration. But we do not see any logic in this argument that otherwise, the notification appointing the Committee itself would be illegal.

9. Some arguments were also advanced, in this connection by Mr. Shyam Nandan Pd. Sharma, appearing for the petitioners that in the Committee the State Government has appointed several persons who were residents of different villages outside the jurisdiction of the notified area and on the other hand did not include persons living within the area, in question. He laid particular stress in this connection of the inclusion of persons like Basant Lal Singh (respondent No. 2) and Jangi Prasad (respondent No. 11) whose names appear in Annexure "3" in Serial Nos. 15 and 32, respectively. These respondents are said to be Mukhiyas of Neelkanthtola and Tajpur-Lodipur Gram Panchayats, which panchayats are outside the notified area, whereas the Mukhiyas of two Panchayats, namely,

Maner and Mohanpur forming part of the notified area, in question, namely, Shri Shivdhar Prasad (Petitioner No. 1) and Sri Tipal Rai (Petitioner No. 7) have not been included in the said Committee. It is no doubt true that the State Government has got apparently a discretion to appoint a Committee to carry out the purposes of this Act in the notified area, in question; on reading the scheme of the Municipal Act under the provisions relating to the election of Municipal Commissioners who are necessarily to be residents within the Municipal limits, we would like to observe that the State Government would have done better to include in the Committee only such members who were residents of the local areas falling under the Notified Area Committee, in question, unless for any special reasons. However, as already observed since the power to appoint a Committee is absolute in the State Government, without any statutory limitations we do not feel that a rule can be issued in this regard against the State Government.

10. In the midst of our Judgment Mr. Sharma sought permission to raise a further question, namely, that the State Government had no authority to nominate a Vice-Chairman while constituting the Committee in question. Considering the importance of the question we permitted him to canvass this point which was also indicated in the writ petition, although not in a very clear term as now canvassed by the learned counsel.

11. While constituting the Committee, the State Government has appointed Shri Rajniti Prasad (respondent No. 40) as the Vice-Chairman of this Notified Area Committee. In the draft notification, one of the provisions of the Act which was sought to be made applicable to this notified area was also Section 23 of the Act, but in the final publication, this provision has been dropped. As already said earlier u/s 389 (a) the State Government may apply or adopt to a notified area or any part thereof any provision of the Municipal Act by a notification. Chapter II of the Act dealing with the constitution and Government of Municipalities envisages certain office bearers, namely, Chairman, Vice-Chairman and President. Section 20 of the Act deals with the election of a Chairman and Section 21 with the appointment of a Chairman in certain contingencies mentioned therein. Section 23 of the Act deals with the election of a Vice-Chairman and reads as follows:--

"The Commissioners at a meeting shall elect one of their own number not being a salaried servant of Government to be Vice-Chairman."

12. The provisions referred to above, in our opinion, make it clear that whereas a Chairman can be either elected by the Municipal Commissioners of a Municipality or on their failure be appointed by the State Government in terms of the provisions contained in Section 21 of the Act, (in the instant, case the State Government, therefore, could appoint a Chairman) so far as the case of a Vice-Chairman is concerned, the only procedure in the Municipal Act is for his election and there is no provision, for appointment of a Vice-Chairman in the same or similar situation as envisaged in Section 21 of the Act for appointment of a

Chairman. From the scheme of the above provisions we are inclined to take a view that the Legislature did not intend to empower the State Government to appoint a Vice-Chairman in a Municipality and this office is filled up with the process of election by the Commissioners of a Municipality. Although the Court is not bound to investigate into the Legislative wisdom for making any provision and examine the reasons for making two different provisions for filling up the offices of the Chairman and Vice-Chairman, what appears to us as the possible reason for this difference is that whereas in the absence of a Chairman a Municipality cannot function, at all, and carry out the purposes of the Act, the position of a Vice-Chairman is only of a delegate for such of the powers of a Chairman as may be decided in terms of Section 25 to be performed by him or he may perform some duties of the Chairman in his temporary absence as contemplated u/s 26 of the Act.

13. It was finally contended on behalf of the respondents that by omitting to apply the provisions of Section 23 of the Act to the Maner Notified Area Committee, the State Government was not bound to follow the procedure contemplated u/s 23 and was free to take recourse to any other mode and manner for filling up this office and therefore, the appointment of Respondent No. 40 was not in any way invalid. It is difficult to accept this argument. Reading the scheme of the notified areas as contained in Chapter XIV of the Act, the State Government is bound to apply all those provisions of the Act which it may think necessary for making proper administrative provisions for all or any particular purposes of the Municipal Act. Non-application of any prescribed provision would not, in our view, give the State Government a larger or wider power than those contained in the Act itself and that too contrary to the statutory provisions as otherwise it would result in colourable exercise of power and amount to the assumption of a procedure directly opposed and contrary to the main Act.

14. The notified areas are nothing but a simpler form of Municipal Administration on account of lack of appreciable urban population at the time of their constitution. In this connection Section 390 of the Act may also be relevant. It provides that,

"when any enactment, rule or bye-law is applied or adopted to, or any tax imposed in, a notified area under this Chapter, then, unless a different intention appears, such enactment, rule or bye-law, shall apply, and the proceeds of such tax may be expended in such manner, as if the notified area were a municipality and the committee were the Commissioners".

We accordingly, accede to the last contention advanced by Mr. Sharma and hold that the appointment of Shri Rajniti Pra-sad (respondent No. 40) as the Vice-Chairman of Maner Notified Area Committee cannot be sustained. He will, therefore, simply be deemed to be a member of the Committee, and cannot exercise any of the powers of a Vice-Chairman contained in the Municipal Act.

15. In the result this application succeeds only to the extent that in the notification dated 3-2-1976 contained in Annexure "3", Shri Rajniti Prasad (respondent No. 40) shall be deemed to be only a member of the Committee and his appointment as the Vice-Chairman of the Maner Notified Area Committee, is hereby cancelled. This notification is modified to this extent. Let an appropriate writ issue accordingly.

16. In the circumstances, we shall direct the parties to bear their own costs.