

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10923 of 2023

Shailendra Kumar Son of Sri Umakant Jha, Resident of Village- Mahathwar, P.O. Pali, P.S. Ghanshyampur, District- Darbhanga, presently Mukhiya of Gram Panchayat Raj, Ghanshyampur, Block- Ghanshyampur, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Director, Panchayati Raj Department, Government of Bihar, Patna.
4. The District Magistrate, Darbhanga, District- Darbhanga.
5. The District Panchayat Raj Officer, Darbhanga, District- Darbhanga.
6. The Deputy Development Commissioner, Darbhanga, District- Darbhanga.
7. The Block Development Officer, Ghanshyampur, District- Darbhanga.
8. The Block Panchayat Raj Officer, Ghanshyampur, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. SBK Mangalam, Advocate
For the Respondent/s : Mr. Satya Vrat, AC to GA-10

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

Date : 24.07.2024

Heard the parties.

(A) PRAYER:

2. The present writ petition has been preferred for the grant of the following relief/s:-

“(i) for issuance of an appropriate writ in the nature of CERTIORARI for quashing of a part of the Government Resolution dated 03.02.2021 issued under the signature of the Respondent no.2 and contained in his memo



no.758 dated 03.02.2021 whereby and where under an instruction has been issued by the State Government for retaining the existence of the Gram Panchayat, whose certain area has been included in the Urban Local Bodies provided the population of the remaining area of Gram Panchayat is 3,000 or more based upon 1991 census;

(ii) for a declaration that since according to Section -2 (ac) of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the Gram Panchayat Act) the population has been defined to mean and include the population as ascertained at the last preceding census of which the relevant figures have been published and the last census of which the relevant figures have been published is 2011 census, the State Government cannot rely upon the figures of 1991 census for the purposes of direction contained in paragraph no.3 (1) of the impugned notification;

(iii) for issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 15.07.2023 passed by the



Respondent no.4 and contained in his memo no.2634 dated 15.07.2023 ,whereby and where under the Respondent no.4 has been pleased to reject the objection dated 13.07.2023 filed by the petitioner against the draft publication of Respondent no.4 under Section 11 (1) of the Gram Panchayat Act vide his memo no.2392 dated 30.06.2023 whereby and where under he had proposed for merger of Mahathwar village in Gram Panchayat Raj, Lagma which was earlier a part of Gram Panchayat Raj, Ghanshyampur on the ground that if according to 2011 census, the total population of village- Mahathwar is 4523, in view of the resolution of the State Government dated 03.02.2021 read with provisions contained under Section 2 (ac) of the Gram Panchayat Act since the population of village Mahathwar as per published figures of 2011 census is much more than 3,000, the Respondent no.4 is obliged to allow the village- Mahathwar to remain as a Gram Panchayat by its new name i.e. Gram Panchayat Raj, Mahathwar and, therefore, this village cannot be included in Gram Panchayat Raj, Lagma as



proposed by him;

(iv) for issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent no.4 to constitute a Gram Panchayat in the name of Gram Panchayat Raj, Mahathwar under Ghanshyampur Block of Darbhanga District in exercise of his power under Section 11 (i) of the Gram Panchayat Act and allow the petitioner to function as the Mukhiya of the said Gram Panchayat, who was elected as such in General Panchayat Election, 2021;

(v) for issuance of any other appropriate writ/writs order/ orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

(B) CASE OF THE PETITIONER:

3. Prior to 17.06.2022, the Gram Panchayat Raj, Ghanshyampur was in existence and village- Mahathwar with the total population of 4,523 was its part.

4. The State Government in the year 2022 issued a draft notification on 05.01.2022 for inclusion of three revenue villages of Ghanshyampur Gram Panchayat in Nagar Panchayat, Ghanshyampur namely Ghanshyampur Thana No.395, Chhit



Budhev Thana No.394 and Fakirna Thana No.396.

5. In view of the provisions contained in Bihar Municipal Act, 2007 (henceforth for short 'the Act'), pursuant to the draft notification dated 05.01.2022 issued by the State Government, objections were filed.

6. However, the contention is that the objections were arbitrarily rejected by the State Government which followed the final notification vide memo no. 1635 dated 17.06.2022 for including the aforesaid three revenue villages of Gram Panchayat Raj, Ghanshyampur in Nagar Panchayat, Ghanshyampur.

7. The petitioner earlier challenged the same by filing a writ application (CWJC No. 9452 of 2022). It was admitted on 07.08.2022 and is presently pending.

8. Earlier, the issue of existence of certain Gram Panchayats whose parts have been merged with the Urban Local Bodies was under consideration of the State Government and after due consideration, it came out with a notification contained in memo no. 758 dated 03.02.2021 issued under the signature of Respondent no.2 whereby and where under it allowed those villages of a Gram Panchayat area to be retained as a Gram Panchayat where the population of remaining villages of a Gram



Panchayat is more than 3,000. However, in the said resolution, it was also mentioned that the total population of remaining villages of the Gram Panchayat shall not be less than 3,000 according to the published figures of 1991 census.

9. The case of the petitioner further is that after the inclusion of three revenue villages of the petitioner's Gram Panchayat, as the total population of village – Mahathwar became less than 3,000 as per the 1991 census, the Respondent no.4 had published a draft proposal for the merger of the village- Mahathwar in Gram Panchayat Raj, Lagama and as such vide memo no.2392 dated 30.06.2023, objections were invited against the said proposal from the public residing in the village.

10. Since the reliance was placed by the Respondents on 1991 census in the government resolution dated 03.12.2021 as also the draft notification of Respondent no.4 contained in his memo no.2392 dated 30.06.2023, according to the petitioner, it is contrary to the provisions contained under **Section 2(ac)** of the Gram Panchayat Act (henceforth for short 'the Act'). The petitioner as such filed exhaustive application before the Respondent no.4, the District Magistrate, Darbhanga objecting to the said proposal. It came to be rejected by the concerned



respondent no. 4 which was communicated vide memo no. 2634 dated 15.07.2023.

11. Learned counsel took this Court to Section 2 (ac) of 'the Act' which defines the word "**Population**" to mean and include the population as ascertained as the last preceding census of which the relevant figures have been published.

12. Learned counsel for the petitioner submits that the figures of the last census held in the year 2011 is/are in the public domain. Despite that, the 1991 census figures has/have been used for the purposes of allowing a village to remain in the Gram Panchayat. This is in contravention of Section 2 (ac) of 'the Act'.

13. Learned counsel further submits that all these issues were raised before the Respondent no. 4 in the representation. However, the same was rejected taking note of the Government resolution dated 02.03.2021 particularly paragraph 3(1) forcing him to file the writ petition. His submission is that if the 2011 Census population were taken into account, there was no need to include the village Mahatwar in the gram panchayat raj, Lagma. He as such submits that the same be quashed.

(C) CASE OF THE RESPONDENT NOS. 4 TO 7



14. The case of the State respondents is/are that:

**a) for constituting Nagar Panchayat,
Ghanshayampur:**

(i) a draft notification vide memo no. 4262 dated 26.12.2020 was earlier notified and after following the due process of law, the same was constituted vide memo no. 101 dated 03.03.2021;

(ii) further, for the inclusion of other three villages in the said Nagar Panchayat, a notification vide memo no. 67 dated 05.01.2022 came to be notified;

(iii) accordingly, after following the due process, the Nagar Panchayat, Ghanshayampur has been finally constituted vide notification no. 1635 dated 17.06.2022.

15. Aggrieved, the petitioner preferred CWJC No. 9452 of 2022 which was heard and admitted for hearing and is presently pending.

16. The further contention is that the Panchayati Raj Department, Government of Bihar vide letter no.3025 dated 15.03.2023 has issued direction to submit status report of existing Gram Panchayat whose part has been merged in the Nagar Panchayat so that the remaining villages can be merged with the other Villages Panchayat. Accordingly, the respondent



no. 4, the District Magistrate, Darbhanga vide office letter no. 1525 dated 17.04.2023 sought direction from the State Government.

17. Pursuant thereto, the Director, Panchayati Raj Department, Government of Bihar vide letter no.5674 dated 19.05.2023 has issued direction to act in accordance with the resolution no. 758 dated 03.02.2021.

18. Thus taking into account the Notification no. 758 dated 03.02.2021 (Annexure-P/3 to the writ petition) and having found that the population of village **Mahathwar** is less than 3000 as per the census 1991, the respondent no. 4, the District Magistrate, Darbhanga has published a draft proposal for merger of area and population of village **Mahathwar** in Gram Panchayat Raj **Lagma** vide memo no. 2392 dated 30.06.2023 (Annexure-P/4 to the writ petition).

19. Further, the objection/representation filed by the petitioner was considered and the respondent no. 4, the District Magistrate, Darbhanga after providing reasonable opportunity, passed a reasoned order as contained in memo no. 2634 dated 15.07.2023(Annexure- P/6 to the writ petition). It took note of the fact that after the inclusion of three villages with the Nagar Panchayat, Ghanshyampur, the population of Mahathwar village



became less than 3000 as per the 1991 census and thus following the Government resolution/notification no. 758 dated 03.02.2021, it was included with Gram Panchayat, Lagma.

20. A supplementary counter-affidavit has also been filed by the aforesaid respondents.

21. Learned State Counsel has drawn the attention of this Court to the provisions of Section 127 of 'the Act' which read as follows:

“Section 127: Determination of Elected Members after Census – Upon the publication of figures of each Census, the number of elected members of Panchayat shall be determined by the State Government on the basis of the population of the Panchayat area as ascertained at that Census:

Provided that the determination of the number as aforesaid shall not affect the then composition of the Panchayat unit until the expiry of the term of office of the elected members then in office;

Provided further that notwithstanding



any other provision contained in this Act, until the relevant figures for the census taken in the year 2021 are published, it shall not be necessary for the Government to redetermine the number of elected members on the basis of population of the Panchayat area ascertained at the 2011 census."

22. Learned State Counsel submits that in the light of the second proviso, the Government has taken a conscious decision not to effect general delimitation of present Gram Panchayats and Wards therein till the figures of 2021 census are published. In other words, the State Government is not keen at the moment to create new Gram Panchayats in the State.

23. The further submission is that the Gram Panchayats and Wards thereof were created way back in the year 1993-94 on the basis of population figures of 1991 census. As a typical situation arose because of merger of some part of a Gram Panchayat constituted in the year 1993-94 with newly created Urban Local Bodies and the standard population for creation of a Gram Panchayat (7000) was considerably reduced because of exclusion of some area from the Gram Panchayat, the issue had



to be addressed by a special order of the government regarding the existence of the affected Panchayat.

24. It was in the aforesaid background that the Government in its wisdom took the decision that affected Gram Panchayats with less than 3000 population ascertained on the basis of 1991 census shall be merged with a Gram Panchayat adjacent to it while those having 3000 or more population will be retained as a Gram Panchayat entity.

25. The further stand of the respondents is that to keep rationality throughout the State, the population figures of 1991 census were taken into consideration and not the population figures of 2001 Census and/or 2011 census. The contention is that if the population figures of 2001 or 2011 census would have been taken into consideration for reconstitution of the Gram Panchayats, almost all the Gram Panchayats in the State will be required to be reconstituted afresh thus resulting in a chaotic situation which will defeat the very spirit of the section 127 of 'the Act'.

26. The contention of the State-respondent is that in the aforesaid background, the writ petition is fit to be dismissed.

(D) FINDINGS:

27. Having heard the learned Counsel for the



petitioner as also the State and perusing the records, this Court first takes note of the notification no. 758 dated 03.02.2021 which read as follows:-

बिहार सरकार

पंचायती राज विभाग

संकल्प

संचिका सं० -8प/वि-5-19/2020/पं०रा०/758/पटना, दिनांक 03/2/2021

विषय :- ग्राम पंचायतों के कुछ क्षेत्रों को नगर निकायों में सम्मिलित कर लिए जाने के फलस्वरूप अवशिष्ट ग्राम पंचायतों की जनसंख्या 1991 की जनगणना के आधार पर 3000 या उससे अधिक रहने पर उन्हें यथावत रखने एवं 3000 से कम रहने पर समीपवर्ती ग्राम पंचायत/ग्राम पंचायतों में सम्मिलित कर उनके पुनर्गठन तथा नामकरण के संबंध में

राज्य की कई ग्राम पंचायतों के कुछ अंश को नगर निकाय में सम्मिलित कर लिए जाने के फलस्वरूप उक्त ग्राम पंचायतों के पुनर्गठन की आवश्यकता हो गयी है।

2. ग्राम पंचायतों के गठन/ पुनर्गठन एवं उसकी वैधिकता/औचित्य के बिन्दु पर बिहार पंचायत राज अधिनियम, 2006 की धारा 11 के उप नियम (1) एवं (2) में प्रावधान किए गए हैं। पंचायती राज विभाग के वैधानिक आदेश संख्या-5608 दिनांक 15.10.1993 में ग्राम पंचायतों के गठन/पुनर्गठन एवं नामकरण के संबंध में विस्तृत प्रावधानों का उल्लेख किया गया है।

3. उक्त परिप्रेक्ष्य में बिहार पंचायत राज अधिनियम, 2006 की धारा 11 के अधीन राज्य सरकार द्वारा यह निर्णय लिया गया है कि ग्राम पंचायत क्षेत्रों को



आंशिक रूप से नगर निकाय क्षेत्र में सम्मिलित किए जाने के फलस्वरूप संबंधित ग्राम पंचायतों के पुनर्गठन की कार्रवाई निम्नरूपेण की जाएगी:—

(1) जिन ग्राम पंचायत क्षेत्रों की आबादी 1991 की जनगणना के आधार पर 3000 या उससे अधिक रह जाएगी और उनका मुख्यालय ग्राम, ग्राम पंचायत क्षेत्र में ही बचा होगा, तो अवशिष्ट ग्राम पंचायत क्षेत्र को पूर्व नाम के साथ ग्राम पंचायत के रूप में बने रहने दिया जाएगा। अगर नगर निकाय क्षेत्र में उक्त ग्राम पंचायत का मुख्यालय ग्राम भी समाहित हो गया है, तो पुनर्गठित ग्राम पंचायत के लिए मुख्यालय ग्राम का निर्धारण एवं उक्त ग्राम पंचायत क्षेत्र का नामकरण वैधानिक आदेश संख्या—5608 दिनांक 15.10.1993 के प्रावधानों के अधीन किया जाएगा।

(2) जहाँ नगर निकाय में सम्मिलित किए जाने के फलस्वरूप संबंधित ग्राम पंचायत क्षेत्र की जनसंख्या 1991 की जनसंख्या के आधार पर 3000 से कम रह जाएगी, वहाँ उस क्षेत्र को समीपवर्ती ग्राम पंचायत/ग्राम पंचायतों में शामिल कर पूर्व ग्राम पंचायत का अस्तित्व सामप्त कर दिया जाएगा तथा आवश्यकता होने पर समीपवर्ती ग्राम पंचायत का पुनर्गठन/नामकरण वैधानिक आदेश संख्या— 5608 दिनांक 15.10.1993 के प्रावधानों के अधीन किया जाएगा।

4. पुनर्गठन के फलस्वरूप ग्राम पंचायत एवं इसके प्रादेशिक निर्वाचन क्षेत्रों के आरक्षण में किसी संभावित परिवर्तन के संबंध में राज्य विधि विभाग के परामर्श से अलग से निर्देश जारी कर सकेगी।

आदेश :— आदेश दिया जाता है कि इस संकल्प को बिहार राजपत्र के आगामी असाधारण अंक में सर्वसाधारण की जानकारी हेतु प्रकाशित किया जाये।

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(अमृत लाल मीणा)



अपर मुख्य सचिव

28. Clause 3(2) of the said notification clearly defined that Gram Panchayat with less than 3000 population ascertained as per the 1991 census shall be merged with a Gram Panchayat adjacent to it.

29. This Court would further like to incorporate the provisions of **Section 11 (1) of 'the Act'** which read as follows:-

"Declaration of Gram Panchayat Area -

(1) Subject to the general or special orders of the Government, the District magistrate may, by notification in the District Gazette, declare any local area comprising a village or a group of contiguous villages or part thereof to be a Gram Panchayat area with a population within its territory as nearly as seven thousand:

Provided that the District Magistrate may, after consultation with the Gram Panchayat concerned, by a notification, at any time, include within or exclude from any Gram Panchayat area any village or part thereof and alter the name of the Gram Panchayat.



Provided also that the Government may issue necessary direction to the District Magistrate on ground of reasons to be recorded in writing to constitute/reconstitute a Gram Panchayat area even with lesser population of seven thousand."

30. The Government, as stated above, vide memo no. 758 dated 03.02.2021 came out with a notification to merge the village with less than 3000 population as per the 1991 census with the adjoining gram panchayat.

31. The aforesaid decision has been taken with respect to all the Gram Panchayats across the State and is not directed towards the petitioner's Gram Panchayat alone. Thus, the intent of the State Government can not be questioned. In the light of the said notification dated 03.02.2021 and because the population of the Mahatwar village had become less than 3000 as per the 1991 Census, it was merged with the Gram Panchayat, Lagma.

32. The contention of the petitioner that despite the population of 2011 Census in public domain, the 1991 Census has been taken for consideration, the same has been ably answered by the State-respondents that till 2021 Census is published, they decided to take the population of 1991 Census,



as gram panchayats were constituted in the year 1993-94. Thus taking up 2011 census will result into reconstitution of almost all the gram panchayats across the State. As such, they have rightly contended that if the 2011 Census is taken into consideration, there would have been reconstitution of all the Gram Panchayats in the State creating chaotic situation.

33. Further, the proviso to Section 127 of 'the Act' clearly allows the State Government to not take into account the 2011 Census till the 2021 Census is published. It is to be noted that as per the notification dated 03.02.2021, the figure is 3000.

34. It was in the aforesaid background that the respondent no. 4, the District Magistrate, Darbhanga came out with the decision for the merger of the Mahatwar village in the Gram Panchayat Raj, Lagma after having found the population of the village to be less than 3000 as per the 1991 Census.

35. This Court reiterates that the notification no. 758 dated 03.02.2021 has been issued and is/are applicable to entire State. In line thereof, the village Mahatwar with a population less than 3000 as per the 1991 Census has been included in the village Lagma. No malafide on the part of the



respondents is/are have been alleged by the writ petitioner.

36. In this background, this Court holds that the relief sought for the writ petitioner deserves outright rejection.

37. Accordingly, ordered.

38. The writ petition is dismissed. No Cost.

(Rajiv Roy, J)

Adnan/-

AFR/NAFR	AFR
CAV DATE	15-07-2024
Uploading Date	25-07-2024
Transmission Date	

