
(1995) 12 PAT CK 0041

In the Patna High Court

Case No : C.W.J.C. Nos. 2542 and 2962 of 1995 (R)

Abdul Shakoor and Another etc.

APPELLANT

Vs

State of bihar and Others etc.

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0041

Judgement

S.N. Jha, J.—The petitioners in these two writ petitions are aggrieved by the constitution of Jamsoti and Chalkusa Gram Panchayat in the district of Hazaribagh and Daludih-Maheshpur Gram Panchayat in the district of Dhanbad respectively. The ground urged is that in terms of the Proviso to Section 11 of the Bihar Panchayat Raj Act, 1993, it is mandatory for the District Magistrate to consult the Panchayats concerned before effecting any change in the geographical limits of the existing Panchayat formed under the Bihar Panchayat Raj Act, 1947, which continues to be legal entity u/s 157(f) of the 1993 Act till the first sitting of the Panchayat under the new Act. The crux of the dispute involves inclusion, exclusion of certain villages or bifurcation of the existing Panchayat. Counsel for the parties in course of hearing also referred to the factual aspects. In support of the contention that consultation with the Panchayat concerned is mandatory, reliance was placed on the decision of the Supreme Court in State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., and an unreported order of this Court in C.W.j.C No. 10759 of 1994 (Ramanuj Sharma v. The State of Bihar and ors.) disposed of on 1.8.1995.

2. On behalf of the State, inter alia, reference was made to Section 2 of the Bihar Panchayat Raj (Second Amendment) Ordinance, 1995 (21 of 1995), inserting Sub-section (2) in Section 11 of the parent Act. The said provision runs as follows:

The State Election Commission suo motu or on receipt of a written representation from an aggrieved person is of the opinion that therein sufficient reason for doing so, may review the legality and propriety of any Gram

Panchayat declared under Sub-section (1) and may call for the relevant records for this purpose, and subject to the provisions of this Act may pass such order which the Commission deems proper and reasonable.

3. On behalf of the petitioners it was submitted that once elections are notified the Commission will cease to have jurisdiction. This submission has no substance as in view of the proviso appended to the aforequoted provision which only bars the jurisdiction of the Commission after the notification of the date of Panchayat elections "in a new case." In other words, the jurisdiction of the Commission will not cease with respect to any dispute which may be pending on the date of notification. The Commission will only cease to have jurisdiction with respect to fresh disputes.

4. I am of the view that the above said provision provides complete and effective remedy to aggrieved persons. No doubt, the jurisdiction of this Court under Article 226 of the Constitution is not ousted. If there is violation of statutory rules, the writ jurisdiction can certainly exercise notwithstanding that alternative remedies are provided under the statute. But, in my opinion, without going into the facts, the substance of the grievance in regard to inclusion/exclusion of villages or bifurcation of existing Panchayats cannot be properly appreciated. A direction to the District Magistrate to consult the Panchayat concerned may in certain cases turned out to be exercise in futility. The State Election Commission, on the other hand, can enter into facts as well and after perusing the records pass final and complete orders. The above said provision is the recent development which has come into existence on 16.10.1995. The writ petition C.W.J.C. No. 10759 of 1994 relied upon by the counsel for the parties was disposed of prior to the amendment on 1.8.1995.

5. I would, thus relegate the petitioners to the alternative remedy as provided u/s 11(2) of the Act and disposed of the writ petition accordingly.