

(1994) 12 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 6793 of 1992

Bibhash Chandra Choudhary and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 29, 29(2), 386(1), 390, 390C

Citation : (1994) 12 PAT CK 0003

Hon'ble Judges : S.K. Singh, J;N. Pandey, J

Bench : Division Bench

Judgement

1. A petition was filed for extension of some time which was fixed by this Court for holding election of the municipalities.
2. In these cases, notifications issued by the State Government u/s 29(2) read with Section 386(1)(b) of the Bihar and Orissa Municipal Act, 1922 were challenged. By the aforesaid notification different ad hoc committees to look after the administration of the municipalities were constituted.
3. It was held that the Government had full authority to constitute such Committees. Therefore, there was no defect in the notifications whereby different ad hoc committees were constituted by the State Government. But it was found that the term of duly constituted committees through electoral process had expired several years before. Therefore, it was considered that democratic process to conduct the election and constitute a body for administration of municipalities cannot be defeated or side-tracked for political consideration. The practice to substitute nominated members in place of elected representatives should be deprecated as far as possible.
4. Having regard to the aforesaid view as also having ascertained views of all the parties, we directed the Respondents to complete the election process within six months from the date of the order. It was further directed, in case, the election is not held within the period indicated above, apart from other consequences that

may follow, the ad hoc committees constituted through the impugned notification shall stand superseded and Special Officers of such municipalities will be authorised to take over the administration till the committees are constituted through democratic process.

5. In the meantime, by Bihar Municipal (Amendment) Ordinance, 1994, a drastic change was brought by amending several provisions of the Bihar and Orissa Municipal Act, 1922. The new provisions were notified in the Bihar Gazette (Extra Ordinary) on 30th May, 1994. Section 29 of the old Act of 1922 has been substituted in the following terms:

14. Substitution of Section 29 of B and O. Act 7, 1922.-In the said Act for section 29 the following shall be substituted namely:

29. Duration of Municipality.-(1) Every Municipality unless sooner dissolved under any law for the time being in force, shall continue for a term of five years from the date appointed or its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution;

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality which is functioning immediately before such amendment till the expiration of its duration specified in Sub-section (1);

(3) An election to constitute a Municipality shall be completed:

(a) before the expiry of its duration specified in Sub-section (1);

(b) in case of dissolution before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less, than six months, it shall not be necessary to hold any election under this Sub-section for constituting the Municipality for such period.

4. A Municipality constituted upon the dissolution of the Municipality before the expiration of its duration shall continue only for the remainder of the period for which dissolved Municipality would have continued under Sub-section (1) had it not been dissolved.

From bare reference to these provisions, it would appear that before expiry of the duration of the term specified in Sub-section (1) election to constitute a Municipality has to be conducted. No such power has been given to the government to constitute ad hoc committee like the present one. But by insertion of new section, after Section 390 of the old Act, Section 390C, a saving clause, has been added. Second proviso of this saving clause provides that notwithstanding the provisions of this Ordinance, Municipality and Notified Area Committee which were separately constituted under the Bihar and Orissa

Municipal Act, 1922 shall continue to function till the constitution and the first meeting of the Municipality, is held in terms of the new provisions.

6. It has been pointed out that unless our order is modified, the representatives of the Committee can avail the benefit of the saving clause. It was further contended that several other committees constituted by the State Government in the same manner are availing the benefits of the saving clause introduced in the new Ordinance. Therefore, prayer was made that time granted by this Court for holding election be extended and the Ad hoc Committees be allowed to function till a fresh election is held.

7. Having noticed the aforesaid prayer, we directed the Advocate General to get instruction from the relevant authorities within what time, the election of the municipalities shall be conducted.

8. Having received instructions, the learned Advocate General submitted that within six months from the date of the general election of the legislative assembly, the election of the municipalities shall be conducted.

9. Having noticed entire facts and circumstances as also in view of the fact that in similar background other committees of different municipalities are still continuing, we feel inclined to extend the period, fixed in the earlier order, for holding election. But the time prayed for by the Advocate General is completely on a vague ground. As we have already noticed that the practice to substitute nominated members in place of elected representatives has to be deprecated, therefore, the authorities are required to be very much particular on this aspect. No democratic process for holding election can be scuttled for indefinite period.

10. Accordingly, we direct the Secretary, Urban Development Department, Government of Bihar, as well as other relevant authorities of the State Government to complete the election process of the municipalities by 30th of June, 1995. Since the time limit fixed by the aforesaid order is being extended till 30th of June, 1995 the ad hoc committees shall be entitled to function in the same capacity till that day.

11. It would be useful to notice that after expiry of the period fixed by the Court if certain functions have been done by Special Officers of the Respondent municipalities, while exercising power of the committees, same shall be treated valid and justified.

12. To the extent indicated above, the order dated 11.4.1994 passed in the aforementioned cases is modified.

13. C.W.J.C. No. 8394 of 1994 (Danapur Nizamat Municipality and Ors. v. State of Bihar and Ors.) was filed on behalf of Danapur Nizamat Municipality. The said Municipality was also one of the Respondents in C.W.J.C. No. 12715 of 1992. Therefore, no separate finding is necessary with respect to the present writ application in this case. The said writ application is being disposed of by a separate, order.