
(2003) 08 PAT CK 0067
In the Patna High Court
Case No : C.W.J.C. No. 6871 of 2002

Bihar Rajya Panchayat

APPELLANT

Vs

Election Commission and Others

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Constitution of India, 1950 — Article 171(3)

Citation : (2003) 3 BLJR 1730 : (2003) 4 PLJR 338

Hon'ble Judges : R.S. Dhavan, C.J.; S.K. Singh, J

Bench : Division Bench

Judgement

R.S. Dhavan, C.J. and S.K. Singh, J.—This is a matter in which the petitioner drew the attention of the Court that the seats representing members from self governing institutions are lying vacant at the Legislative Council for almost last 25 years. The petitioner was referring to Sub-clause (3) of Article 171 of the Constitution of India.

2. When the Court sought return on the writ petition from the State-respondents, the proposition was not resisted. The State-respondents acknowledged that indeed these seats are lying vacant at the Legislative Council. The respondents also acknowledged that to fill seats certain enactments would need to be updated. As a consequence of this proceeding amendments were caused to be made to the Representation of the Peoples Act 1950 and the Schedule to this Act. The details are given in the orders of the Court dated 24th July, 2002, 30th October, 2002, 1st May, 2003 and 9th July, 2003.

3. Today, learned counsel for the petitioner Mr. M.P. Gupta and the counsel for the State Mr. S.K. Ghosh, Sr. Advocate, AAG-II, assisted by Mr. Nirmal Kr. Sinha, J.C. to AAG II, have made a joint statement that as a result of this proceeding the 24 seats at the Legislative Council have been filled recently as Members of the Legislative Council have taken their oath and now are functioning at the Legislative Council after two decades. This is breaking new ground in the political administration of the State and a true representation of the third tier of the

Government at the Legislative Council in terms of Article 171(3) of the Constitution of India. This indeed was a public interest litigation in true sense and spirit of such public causes in Court. This was an effort to put grass root democracy to see its representation as ordained by the Constitution at the Legislative Council. This was legal aid to represent self governing institutions at the legislature.

4. The Court appreciates the efforts which were made by Mr. M.P. Gupta in bringing this matter to the notice of this Court and concern shown in this public cause by bringing this petition. The Court equally appreciates the efforts of the Additional Advocate General II by advising the Government that the void in the Legislative Council by the unfilled seats representing members from the institutions of local self Government is a situation which cannot continue. Not to be unnoticed is the counsel who appeared on behalf of the Election Commissioner of India, Mr. J.P. Karn who had also made efforts to ensure that the amendments to the Representation of the Peoples Act, 1950 are made.

5. To sum up, by the effort of these counsel, it has been possible for the Court to render the orders which lie on record. The purpose of the petition has been achieved.

6. It will only fair that the Court recommend to the Executive Chairman, Bihar State Legal Services Authority, that counsel for the petitioner, aforesaid, be provided legal aid as counsel's fee at Rs. 10,000/- (Rupees ten thousand only) and expenses at Rs. 1,500/- (Rupees one thousand and five hundred only).

This petition succeeds.