

(2003) 05 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 6871 of 2002

Bihar Rajya Panchayat Parishad

APPELLANT

Vs

Election Commission and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Constitution of India, 1950 — Article 171

Citation : (2003) 2 BLJR 1025

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Mahendra Prasad Gupta, S.K. Ghosh, AAG II for the State, K.B. Nath, for State Election of India, Sanjay Singh, Addl. SCCG for the Union of India, Ministry of Law and Justice, for the Appellant; J.P. Karn, for the Respondent

Judgement

Ravi S. Dhavan, C.J. and R.N. Prasad, J.—These proceedings are specifically about the void which exists in the Legislative Council of Bihar. Bihar has a bicameral legislature. Without the Legislative Council its composition for the last two decades has avoided compliance of the Constitution of India as required under Article 171; particularly the representation at from members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify. This aspect is noticed in Sub-clause (a) of Clause (3) of Article 171. The seats in Legislative Council in Bihar were without representation in this context and lie vacant for more than two decades. The last, time the Legislative Council has a full house, was in 1982. What has been noticed in the previous paragraph is not all. The third tier of Government was also missing in Bihar for last two decades. Even after the Constitution was amended by inserting the Chapters on Panchayats and Municipalities, self-Government was absent until the Court virtually pushed the State of Bihar with a reminder that it was an obligation of Constitution. State Government was told that if institutions of self-Government were not returned, the Court would certify the State Government's stance as an anti Constitution posture. Consequently, the elections to Panchayats were held in 2001. The election to the Municipalities were

held in 2001.

2. But, the experience of democracy was itself lost in Bihar for one whole generation. The third tier of the Government was missing during this period. Consequently, a part of the Legislative Council was lying vacant for two decades also without representation from local self-Government.

3. The Court had cautioned Counsel for the State of Bihar, Union of India, and the Election Commission of India or the State Election Commission, that they are obliged to tell the Court on what exactly is the schedule to fill the vacant seats at the Legislative Council. This order is a sequel to the order dated 24th July, 2002, as a consequence of which the Representation of the People Act, 1950 was amended to fall in line with the Constitution of India. Amendments which now have been made in the Act mention representation from the third tier of the Government. After the Court passed an order on 24th July, 2002 the Fourth Schedule in reference to Section 27(2) stood amended by mentioning institutions which constitute self-Government, namely, (1) Nagar Parishads, (2) Cantonment Boards, (3) Nagar Panchayats, (4) Zila Parishads, (5) Panchayat Samitis, (6) Nagar Nigams (Corporations) and (7) Gram Panchayats.

4. But, this alone could not fill seats at the Legislative Council. There was a complication of delimitation of Council constituencies. The State of Bihar was split in November, 2000. Some districts merged with the new State. New districts were carved in the State of Bihar also. This necessitated an order under Delimitation of Council Constituencies (Bihar) Order, 1951. In pursuance of Section 11 of the Representation of the People Act, 1950 (43 of 1950), the promulgation recites that President is pleased to make the following order, namely :

This order may be called the Delimitation of Council Constituencies (Bihar). Order, 1951.

5. On the last occasion when the matter was listed on 7th April, 2003 the Court was intimated that the Election Commission of India has already sent to the Ministry of Law and Justice a draft notification for carrying out necessary amendments and further for issuance of an order under the Delimitation of Council Constituencies (Bihar) Order, 1951.

6. When the matter was taken up before the lunch recess today no Counsel present had any instructions as to whether the notification had been issued under the 1951 Order. The Court felt that any institution referred to in the Constitution of India, which works a parliamentary democracy should, not remain in void for any given moment. Thus, the Court required Counsel for the Union of India to take instructions and form the Court after the lunch recess whether the notification under 1951 Order has been issued. Otherwise, by next week the Chief Election Commission and the Secretary, Ministry of Law and Justice be present in the Court to explain the delay. During afternoon, Counsel for Union of India informed the Court that a gazette notification, in fact, was issued last

month (today is 1 May) on 10 April, 2003.

7. This is the notification which was issued under the Delimitation of Council Constituencies (Bihar) Order, 1951. The notification rectifies and declares the position as of date, to rename constituencies, the extent of constitutes and number of constituencies. Thus, with this notification of 10 April, 2003 the machinery is now in position to seek the representatives of appropriate local bodies to the legislative Council within the meaning of Article 171(3)(a). The next question of the Court to learned Counsel for the Election Commission of India was as to when these elections will take place? On instruction received, Counsel from Election Commission of India, informed that elections are scheduled not later than the first week of July, 2003. He further intimated that necessary instructions for carrying out these elections to the legislative Council are in the process of being issued to the Chief Electoral Officer, Bihar. The Court will now await the result of the election.

8. Put up during the last week of July, 2003.

9. The Court cannot help appreciating the assistance rendered by each of the Counsel representing the State of Bihar, Union of India, the Election Commission of India and the State Election Commission and not to be unnoticed the cause as was brought and the service rendered in this Public Interest Litigation by Counsel for the petitioner, Mr. M.P. Gupta. The Court now hopes that this schedule of election which has been indicated to the Court will be adhered to and by the time this case is taken up, the legislative Council of Bihar will be full with incumbents representing institutions of self-Government as are referred to in Article 171 of the Constitution of India.

9. List as indicated above.

10. A copy of the order be given to Counsel for the parties.