
(2002) 07 PAT CK 0140
In the Patna High Court
Case No : C.W.J.C. No. 6871 of 2002

Bihar Rajya Panchayat Parishad

APPELLANT

Vs

The Election Commission and Others

RESPONDENT

Date of Decision : 24-07-2002

Acts Referred:

Constitution of India, 1950 — Article 171, 171(3)
Representation of the People Act, 1950 — Section 10, 15, 16, 18, 22

Citation : (2002) 3 PLJR 600

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

Bench : Division Bench

Advocate : M.P. Gupta, for the Appellant; J.P. Karn, Chakradhari Sharan Singh and K.B. Nath, S.K. Ghose and S. Alamdar Hussain, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—This writ petition raises very important questions to reflect on the void which is in the legislature especially those legislatures which are bicameral. Bihar has a bicameral legislature. The composition of the Legislative Council, as a circumstance of fact, is not complete. Under Article 171(3)(a) of the Constitution of India as nearly as may be one-third shall be elected by electorates consisting of members of municipalities district boards and such other local authorities in the State as Parliament may by law specify. The law in reference to this is the Representation of the Peoples Act, 1950. The modalities to give effect to such representations are in Sections 10 and 27 read with Schedules III and IV, respectively.

2. In order to understand what the controversy is about and where exactly the void is, Article 171 of the Constitution of India, in reference to the context, Sections 10 and 27 of the Representation of the Peoples Act, 1950 and the corresponding Schedules III and IV should be read together.

The Constitution of India CHAPTER III- THE STATE LEGISLATURE

Article 171. Composition of the Legislative Councils. (1) The total number of

members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in Clause (3).

(3) Of the total number of members of the Legislative Council of a State-

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) ...

(c) ...

(d) ...

(e) ...

(4) The members to be elected under Sub-clauses (a), (b) and (c) of Clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said Sub-clauses and under Sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) ...

3. Now, in context provisions of the Representation of the Peoples Act, 1950, need to be seen.

Section 10. Allocation of seats in the Legislative Councils. (1) The allocation of seats in the Legislative Councils of the States having such Councils shall be as shown in the Third Schedule.

(2) In the Legislative Council of each State specified in the first column of the Third Schedule, there shall be the number of seats specified in the second column thereof opposite to that State, and of those seats,

(a) the numbers specified in the third, fourth and fifth columns shall be numbers of seats to be filled by person elected, respectively, by the electorates referred to in Sub-clauses (a), (b) and (c) of Clause (3) of Article 171;

(b) the number specified in the sixth column shall be the number of seats to be filled by persons elected by the members of the Legislative Assembly of the State from amongst persons who are not members of that Assembly; and

(c) the number specified in the seventh column shall be the number of seats to

be filled by persons nominated by the Governor of the State in accordance with the provisions of Clause (5) of Article 171.

Section 27. Preparation of electoral roll for Council constituencies. (1) In this Section, "local authorities constituency" "graduares" constituency" and "teachers" constituency" mean a constituency for the purpose of elections to a Legislative Council under Sub-clause (a), Sub-clause (b) and Sub-clause (c), respectively, of Clause (3) of Article 171.

(2) For the purpose of elections to the Legislative Council of a State in any local authorities" constituency-

(a) the electorate shall consist of embers of such local authorities exercising jurisdiction in any place or an area within the limits of the constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities" constituency shall be entitled to be registered in the electoral roll for the constituency;

(c) the electoral registration officer for every local authorities" constituency shall maintain in his office in the prescribed manner and form the electoral roll for that constituency corrected up-to-date;

(d) In order to enable the electoral registration officer to maintain the electoral roll corrected up-to-date, the Chief executive officer of every local authority (by whatever designation such officer may be known) shall immediately inform the electoral registration officer about every change in the membership of that local authority; and the electoral registration officer shall, on receipt of the information"s, strike off from the electoral roll the names of persons who have ceased to be, and included therein the names of persons who have become, members of that local authority; and

(e) the provisions of Sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities" constituencies as they apply in relation to assembly constituencies.

(3)...

(a)...

(b)...

(4)...

(5)...

(a)...

(b)...

(6) For the purposes of Sub-sections (4) and (5) the qualifying date shall be the

1st day of November of the year in which the preparation or revision of the electoral roll is commenced.

4. The corresponding Schedules to the Act, aforementioned, the Third and Fourth Schedules specify the number of seats in a Legislative Council of each State and indicate the local authorities. The Schedules point out:

THE THIRD SCHEDULE Allocation of Seats in the Legislative Council

Number to be elected or nominated under Article 171(3)

Name of State Total number of Seats Sub-clause (a) sub-clause (b) sub-clause (C) sub-clause (d) sub-clause(e)

1 2 3 4 5 6 7

Bihar 75 24 6 6 27 12

THE FOURTH SCHEDULE Local Authorities for purpose of Elections to Legislative Council Bihar

1. Municipalities 4. Notified Area Committees

2. District Boards 5. Zila Parishads

3. Cantonment Boards 6. Panchayat Samitis

5. Counsel for the parties present at the Bar whether the Petitioner, State counsel on behalf of the State of Bihar, the State Election Commissioner who is otherwise present along with his counsel, and counsel for the Union of India have unanimously agreed that a void does exist in the Legislative Council.

6. In so far as the Court is concerned, nothing further need to be said except that as an emergency measure this void must not be permitted to continue. As it is, the Panchayats which were constituted after elections to it concluded last year, which election took place after almost three decades, their representation is not reflected in the Legislative Council as the Constitution of India mandates it, whatever be the term of the Legislative Council one year plus stands reduced for such representatives who represent the Panchayats. Likewise as the municipalities see the return of elected representatives, if they are not represented at the Legislative Council, the latter will be sans their representation also.

7. The High Court cannot make ad hoc arrangements for filling the void on the Legislative Council as has been stipulated by Article 171(3)(a) of the Constitution of India.

8. But, not ignoring the aspect that the void in the composition of the State's bicameral legislature must not continue, the fact that the Constitution of India suffers a void is a very serious. This unmindful slackness in the administration denies the legislature its members which the Constitution places within it.

9. It is the suggestion of the Court that the State of Bihar, the Election Commission at India and the State Election Commission must get together at a meeting within a fortnight wherever be the place of the meeting to resolve this void, so that the legislative council has a complete representation from self governing institutions of grass root democracy.
10. This matter may be put up after a fortnight in the Supplementary list so that the parties may report progress to fill the seats in the Legislative Council.
11. Let a copy of this order be given to each of the parties named free of charge.