
(2001) 10 PAT CK 0022

In the Patna High Court

Case No : C.M.J.C. No's. 5188 of 1998 and 8121 of 2001

Central Bihar Chamber of Commerce and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Constitution of India, 1950 — Article 243Q, 243U

Citation : (2002) 1 PLJR 116

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Mahendra Prasad Gupta, for the Appellant; K.B. Nath, R.K. Dutta, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—All that had to be done within the law to hold elections to the Municipalities, has been done. The only question now is the date of the Municipal elections. Beyond doubt it is now clear that if the Court were not to ask these questions, then the state of limbo will continue as it has for the last 30 years, and Municipal elections kept at bay. The Court is only repeating, as it has done in its earlier orders, its anxiety to retrieve and replace the institutions of self government in the system; plainly speaking, reviving democracy at the grass roots. In this context, what does the Constitution of India say? In the normality of circumstances, if Municipalities had been functioning, then their tenure would be for five years. This is prescribed in Article 243U of the Constitution. When will an election be held to constitute a Municipality? It will happen on the happening of two events: (a) before the term of an existing Municipality expires, an election must be completed, (b) if the Municipality is dissolved for whatever reason, within six months an election must follow. In the present circumstances of Bihar there is nothing to look forward to such as the expiry of the term of a Municipality, because the Municipalities were superceded 30 years ago. This implies that the Municipalities are in a state of dissolution, and are continuing without any content of grass root democracy, since the last 30 years. Such a situation defeats even the Constitution of India. Both the State Respondents,

whether the State Government or the State Election Commission, have been dragging their feet to fall in line with the Constitution of India. These two Respondents never seem to sit down together to co-ordinate measures, but simultaneously blame each other, that they are not doing their job, so that they can take over. First, the Court had to pull up both, to wake them up from their slumber to make the procedural rules for carrying out the preliminaries to the election, delimitation, etc. This should have been done immediately after the Constitution was amended in 1992. A partial exercise was done, but it gathered dust. So much so that the State Government had to energise itself to formulate the following rules.

(i) Rules dated 10 October 2001 to amend "Patna Municipal Corporation Preparation of Electoral Roll and Conduct of Elections Rules, 1953"

(ii) Rules dated 10 October 2001 to amend "Bihar Municipal Election and Election Petition Rules, 1953"

(iii) The Patna Municipal Corporation (Wards) Constitution Rules, 2001.

(iv) The Bihar Municipal Territorial Constituencies (Ward) Constitution Rules, 2001

Now the stage was set to announce the date of the elections. The rules had been forwarded to the State Election Commission on 10 October 2001.

2. The ball now cannot be tossed between two State functionaries, that is the Government and the Election Commission. An intervening period is prescribed under the Constitution to get ready for the elections. What is this intervening period? It is six months. The Constitution does not permit even one day more than six months. To put elections in abeyance is not permitted, whether it is Panchayats, the Municipalities, the State Legislature or the Parliament. This discipline has to be kept, otherwise an administrator will over run democratic institutions.

3. The Constitution, in the chapter on Municipalities, speaks of an intention to constitute a Municipality as an obligation, and further, it is to be done within a time-bound frame. This frame is rigid. The expression "Constitute a Municipality" is used in the Constitution: reference Sub-clause (3) of Article 243U, under the head "Duration of Municipalities, etc. "Thus, this game of continuing superceded Municipalities has to come to an end. Otherwise, institutions of self government, which the Municipality is, and the Constitution refers to it accordingly, become, virtually, local dictatorships - a partnership between the bureaucrat who became the Administrator and the politician who saw institutions of self-government, institutions of grass root democracy, as a rival to his power.

243U. Duration of Municipalities, etc.- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for 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 at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1).

(3) An election to Constitute a Municipality shall be completed,-

(a) before the expiry of its duration specified in Clause (1);

(b) 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 clause for constituting the Municipality for such period.

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

4. Coming straight to the point. Six months, so repeatedly mentioned by the Constitution, being the period of abeyance when institutions of democracy may be in a state of dissolution, must have a starting point and an end point. Two factors are not available, so as to count the time of this period in Bihar. These are a tenure of a Municipality which is about to end, or a date of dissolution, if it has been dissolved. The Court repeats that Municipalities had been superceded more than 30 years ago. Whoever was responsible continuously within the portals of power, left a situation like a reinforced concrete slab, suppressing institutions of grass root democracy. The Court is only lifting this slab. The Constitution refers to an action which cannot be avoided within a time frame. This action is the plan to Constitute the Municipality. When was this done by the State Government? This is the starting point, in the circumstances of Bihar, to reckon the six months. The other factors are not available, as there is no Municipality which is completing its term. On 30 August, 2001, two notifications were issued, both on the same date. By these two notifications, the State Government constituted 32 Municipal Councils and 77 Nagar Panchayats. May be the High Court insisted that the State Government has to take these steps. But this was a step in aid of falling in line with the Constitution of India, to constitute a Municipality, Article 243Q.

5. This, then is the date, the starting point, from which six months will be reckoned, so that Bihar is taken through municipal elections. The Constitution requires that there shall be constituted in every State: (a) Nagar Panchayats, (b). Municipal Councils, and (c) Municipal Corporations. This is Article 243Q.

6. Thus the State Election Commission is now obliged to make its arrangements and take heed of the provisions of the Constitution of India, and intimate to this Court the date, whichever it might be, so that elections are held within six months from 30 August, 2001, so that elected representatives on the conclusion of the elections, constitute the Nagar Panchayats, the Municipal Councils and the Municipal Corporations as institutions of self-government, as the Constitution of India mandates.

7. The matter is adjourned till 19 October 2001. On that date the State Election Commission will intimate the date of these elections. The State Election Commission must now rise to the occasion and take up the challenge to conform to the spirit of the Constitution of India, and retrieve for the State of Bihar, fully functioning Municipalities with elected representatives, within six months of the time these were constituted, on August 30.