

(1999) 10 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 1280 of 1999

Dwarika Nath Prasad @ Munna

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 3 PLJR 718

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Prasoon Sinha and Navin Kumar Thakur, for the Appellant; V.N. Sinha for the State, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner is a resident of Seohar. He owns a truck bearing registration no. BR-06G-0915 which he plies for hire. A body of persons (respondents 6 to 27) purporting to act as Seohar Notified Area Committee constituted under the provisions of the Bihar & Orissa Municipal Act charge an entrance tax on vehicles entering the limits of the Notified Area Committee and the petitioner's truck is required to pay the tax @ Rs. 15/- each time it enters into the limits of the Notified Area Committee. The petitioner objects to the levy of entrance tax and he has been able to find possibly the best way to challenge the levy; this is by questioning the constitution of the Notified Area Committee itself.

2. The admitted position is that the Seohar Notified Area Committee was purported to be constituted by notification, dated 14.7.1994 (annexure-3) issued in the name of the Governor of Bihar and authenticated by the Dy. Secretary to the Government in exercise of the powers u/s 388 (1) of the Bihar & Orissa Municipal Act, 1922. Following the constitution of the Notified Area Committee by the aforesaid notification, another government order was issued on 19.7.1994 (Annexure-4) nominating 25 persons as members of the Notified Area

Committee in exercise of the powers u/s 589(c) (sic?389(c) ?) of the Act and directing them to assemble for the first meeting of the Committee on 21.7.1994.

3. It may be noted here that following the 74th amendment of the Constitution of India, Bihar Municipal (Amendment) Ordinance, 1994 (Bihar Ordinance No. 13 of 1994) was introduced w.e.f. 30.5.1994 (that is to say, about a month and a half before the issuance of the notification, constituting the Notified Area Committee in exercise of power u/s 388 of the Act). Section 24 of the Ordinance deleted section 388 from the Parent Act. Ordinance 13 of 1994 was renewed by Ordinance 19 of 1994 which later got translated into Bihar Municipal (Amendment) Act, 1994 (Act 2 of 1995). It is thus to be seen that on 14.7.1994 the provisions of section 388 were no longer on the statute book, in exercise of which the Notified Area Committee could be constituted and in that circumstance, it was submitted on behalf of the petitioner, that the notification dated 14.7.1994 and the Government order dated 19.7.1994 were dead letter and void ab initio.

4. Mr. V.N. Sinha, G.P. IX tried to meet the petitioner's challenge by submitting that Seohar Notified Area Committee was not constituted for the first time by the impugned notification, dated 14.7.1994 but that was simply a reiteration and reaffirmance of the establishment of the Seohar Notified Area Committee which was done much earlier. Mr. Sinha stated that Seohar Notified Area Committee was constituted much earlier by notification, dated 4.8.1987. That notification was challenged before this Court in C.W.J.C. No. 3992/87 on various grounds. A division bench of this Court by judgment and order dated 20.4.1988 passed in the aforesaid writ petition repelled the other grounds of challenge to the notification but held that the constitution of the Notified Area Committee suffered from the lacuna that the wishes of the residents of the areas were not ascertained before creating the Notified Area Committee as provided under the Act. this Court, however, did not set aside the notification dated 4.8.1987 but allowed the State to ascertain the views of the residents of the areas ex-facto. According to Mr. Sinha the issuance of the impugned notification dated 14.7.1994 was to be viewed in that back-ground and it would then appear that the present notification was issued in furtherance of the High Court's order; that it was simply a corollary of the earlier constitution of the Notified Area Committee and it was, therefore, wholly unaffected by the legislative changes taking place in the meanwhile.

5. The plea raised in defence of the impugned notification is quite ingenious but it is not supported by the facts. The judgment of this Court in C.W.J.C. No. 3992/87 referred to by Mr. Sinha is reported in 1989 P.L.J.R. 56. The operative portion, as contained in paragraphs 15 to 18, of the judgment was as follows:

15. In the instant case no publication was made in the area concerned of the intention to constitute either a municipality or a notified area. No objections were invited. Petitioners herein may not be genuinely complaining about the wishes of the residents of the area but still because no opportunity was afforded to raise

objections, the State action in notifying the area is violative of the principle of natural justice and to that extent of Article 14 of the Constitution of India.

16. The area has, however, been notified and the provisions of the Bihar and Orissa Municipal Act have been extended to it. It is however possible to direct for inviting objections and deciding in accordance with law whether to notify the area or not without nullifying the notification as contained in annexure-1. This can be achieved by a direction to the respondent-State to ascertain the views of the residents of the areas ex facto.

17. We, accordingly, direct the respondent-State to complete the formality of inviting objections etc. by following the procedure as envisaged for constituting a Municipality within three months. Having done so the respondent-State is directed to decide whether to recall the order constituting the Notified Area Committee as contained in Annexure-1 or not and accordingly, issue a notification either cancelling the said notification or affirming it.

18. In the result, the application is allowed to the extent indicated above. In case the State Government shall fail to carry out the direction as above, the Notification as contained in Annexure-1, shall automatically stand cancelled. There shall be no order as to costs.

6. From the above order it is manifest that this Court had given the State Government three month's time for following the procedure as envisaged in the Act for constituting a Municipality, failing which it was directed that the notification, dated 14.8.1987 (Annexure-1 to that writ petition) would stand automatically cancelled. That judgment was delivered on 20.4.1988. The State Government having failed to comply with the procedure laid down in the Act for constituting a municipality within the time allowed by the Court, the notification, dated 14.8.1987 stood cancelled long ago and that episode was thus over long, before the present notification, dated 14.7.1994 was issued. The present notification cannot, therefore, be viewed as being issued in furtherance of the liberty given by this Court or as part of the earlier episode and I have no hesitation in holding that by the impugned notification, dated 14.7.1994 Seohar Notified Area Committee was being sought to be constituted afresh without having any connection with its earlier constitution in 1987.

7. Moreover, even if the period of three months allowed by the High Court is to be disregarded, the State Government could issue a notification on the basis of the liberty given by the High Court only till such time as it had the necessary authority and power under the Act. It is plain and clear that the High Court had given the liberty to the State Government to issue the remedial notification at the time when the State Government had the necessary authority and power under the Act. Once the Act itself was amended denuding the State of its power, it could certainly not act in the matter only on the basis of a liberty given by this Court.

8. For all these reasons, I am constrained to hold that the notification, dated

14.7.1994 purporting to constitute Seohar Notified Area Committee was without jurisdiction and void. Consequently the subsequent office order dated 19.7.1994 must also fall down to the ground.

9. It follows that the levy of entrance tax imposed by the so called Notified Area Committee was had and invalid and no entrance tax can be collected from the petitioner or from any other similarly situated persons. In the facts of the case I will not pass any order in respect of the amount of tax collected earlier but the respondents are restrained from collecting any entrance tax henceforth. In the result, this writ petition is allowed but with no order as to costs.