
(2003) 04 PAT CK 0125
In the Patna High Court
Case No : C.W.J.C. No. 14435 of 2002

Lalan Singh Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Municipal Council and Nagar Panchayat Act — Section 3(14), 3(14B)

Citation : (2003) 3 PLJR 672

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : Vyas Muni Singh, for the Appellant; V.N. Sinha, for the Respondent

Judgement

R.S. Garg, J.—Though not chequered but the history of the present matter appears to be little confusing. Under Annexure-1 dated 23.2.2002 the State Election Commission issued the notification for election of the Municipalities and Nagar Panchayats of the State. According to the said proposal/order, the notification was to be published on 28.2.2002 and after observing other steps the votes polled were counted on 3.5.2002. In accordance with other direction of the Election Commission, the results were to be declared immediately thereafter.

2. On 9.5.2002 a petition filed by one Cazi Ahmad Azam (C.W.J.C. No. 2449/2002) came up for hearing before this Court, the fact that election had already taken place was not brought to the notice of this Court either by the Petitioner or by any other contesting Respondents. After hearing the parties, this Court vide its order dated 9.5.2002 allowed the writ application and quashed Annexure-3 so far as it related to Dumraon Municipality declaring it a Nagar Panchayat. The Petitioner who has been elected as a ward member of the Nagar Panchayat has come to this Court, inter alia submitting that despite quashing of the earlier notification (Annexure-3) so far as it relates to Dumraon Municipality the name of the Municipality would simply be changed and the ward members elected for Nagar Panchayat would now occupy the office of the ward member of the Municipality. He submits that he is not challenging the judgment dated 9.5.2002

passed in C.W.J.C. No. 2449 of 2002 but is simply seeking a declaration from this Court that all persons elected for Dumraon Nagar Panchayat are, in fact, ward members of Dumraon Municipality. Learned Counsel for the State has opposed the petition. After hearing the parties, I am of the considered opinion that the writ application is not only misconceived but is fallacious.

3. When this order was under dictation, learned Counsel for the Petitioner referring to page 11 of the petition submitted that the petition is not for the relief as is referred to above in this order but is for issuance of Rule NISI against the Respondent particularly the Respondent No. 5 to complete the constitution of Dumraon Nagar Panchayat/Municipality without any further delay and the Respondents be asked to take immediate steps towards the completion of constitution of Dumraon Nagar Panchayat/Municipality without any delay. So far as the relief prayed in this writ application is concerned, I find no difficulty in granting the said relief. Once the notification issued by the State declaring Dumraon as Nagar Panchayat is quashed, then the State is required to issue yet another notification in accordance with law. A direction to complete the process within a particular period can certainly be issued by this Court.

4. Let the Respondents/State issue proper notification declaring the status of Dumraon as Municipality or Nagar Panchayat within four months from today. Nothing further is required to be done in the matter.

5. After the petition is allowed, the counsel for the Petitioner says that he may still be heard. I do not understand the propriety of such statement that after the fullest relief claimed by the Petitioner is given to him why such argument should be continued. Despite afore-referred order, the counsel did not stop and continued with his arguments. Referring to Clause 14 of Section 3 he submits that the Municipality means an institution of self-Government and includes Municipal Council and Nagar Panchayat constituted under the Act and as the election of Nagar Panchayat was already held and Nagar Panchayat is covered under the definition of Municipality further action ought to have been taken by the State or the State Election Commission in alternative fresh election should be ordered. The argument raised by the learned Counsel for the Petitioner is in ob(sic)on of Clause 14-B of Section 3 which defines a Nagar Panchayat. Under the Act a sharp distinction is maintained in Municipal Council Nagar Panchayat etc. The word "Municipality" though includes a Nagar Panchayat constituted under the Act but a Nagar Panchayat can not be equated with a Municipality. The election were riot held for Municipality, the elections were held for Nagar Panchayat. After the said notification declaring Dumraon as Nagar Panchayat was quashed, even according to the Petitioner no further notification has been issued. Unless such a notification is issued it would not be possible for any Court to direct the Election Commission to issue the election programme.

6. The relief which was basic and prudent that the status of Dumraon, whether it is a Municipality or a Nagar Panchayat be declared by the State Government has already been given, but the learned Counsel for the Petitioner is still not

satisfied. I do not understand that what further relief he wants from this Court. Despite repeated requests from" this Court he went on arguing that this Court must hear him to do complete justice for him. I do not understand that to what I am leading now. When a petition is allowed and fullest relief is granted then a counsel must feel content. A counsel of eminence, understanding and seniority is not required to pounce upon a Judge and tell the law when the Judge understanding his case is giving him the fullest relief.

7. Present is a fit matter where I could have drawn proceedings against the counsel, but taking into consideration the totality of the circumstances I impose a cost of Rs. 500/- on the counsel who has simply wasted the time of this Court despite grant of the fullest relief to the Petitioner. The cost should be deposited in ten days.

8. After this order was dictated the counsel created a scene in Court by saving that the period of ten days should commence after the period of appeal. I asked him that I have passed the order and he should now take the order to be final. The counsel went on saying that he is making a request to the Court. The Court specifically asked him not to disturb the day's work and take his seat but the counsel did not stop.

9. Issue notice to Shri Vyas Muni Singh, a counsel practising in this Court that why contempt proceedings be not drawn against him and he be not punished for causing a scene in the Court causing interference in dispensation of justice and scandalising the Court by his behaviour. Notice be issued immediately. A separate proceeding be registered.

10. This contempt matter be listed for consideration on 29th April, 2003 on top of the supplementary list.