

(2008) 09 PAT CK 0049
In the Patna High Court
Case No : CWJC No. 3929 of 2002

Magan Lal Sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 109, 110
Penal Code, 1860 (IPC) — Section 64, 64, 65, 66, 67

Citation : (2008) 4 PLJR 516

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Shailendra Kumar Jha, for the Appellant; Shashi Bhushan Kumar for the State and M/s K.B. Nath, Sanjeev Nikesh for the State Election, for the Respondent

Judgement

Ramesh Kr. Datta, J.—Heard Learned Counsel for the petitioner and Learned Counsel for the State Election Commission and the State. The petitioner seeks quashing of the order contained in Memo No. 127 dated 11.3.2002 passed by the District Magistrate-cum-District Election Officer (Urban Body), Samastipur, by which he has rejected the nomination paper filed by the petitioner on 7.3.2002 for the post of the Member of Ward Nos. 1 and 2 of Nagar Panchayat, Dalsingsarai.

2. Learned Counsel for the petitioner, at the outset, states that since fresh general elections to the Urban Municipal Body have already taken place, hence, *stricto sensu* the writ application has become infructuous by the passage of time, but it is stated by Learned Counsel that the interpretation of the legal provisions of Section 17 of the Bihar Municipal Act, 1922 as amended by the Bihar Municipal (Amendment) Ordinance, 2001, which provision is in *pari materia* to the provisions contained in the present Bihar Municipal Act as also the Bihar Panchayat Raj Act, involves a question of law which ought to be decided by this Court.

3. The facts of the case fall within a narrow compass. The petitioner filed his nomination paper for the post of Member of Ward Nos. 1 and 2 on 7.3.2002 which was rejected by Respondent No. 3, District Magistrate-cum-District Election Officer (Urban Bodies), Samastipur by the impugned order dated 11.3.2002 on the ground that the petitioner was disqualified in terms of the provisions of Section 17 of the Bihar Municipal Act, 1922 as amended. It was held in the impugned order that the petitioner was convicted in Barauni R.P.F. Case No. 37/1981 and Barauni R.P.F. Case No. 6/1981 on 30.8.1993. In the first case, he was sentenced to a fine of Rs. 1,000/- and on failure to pay the same, he would have to undergo simple imprisonment for six months and in the other case, he was awarded a fine of Rs. 500/- and in default of payment thereof, he would have to undergo three months imprisonment. The reasoning in the impugned order is that on a consideration of the two sentences, the petitioner has been sentenced to a total fine of Rs. 1,500/- and on non-payment of the same, he would have to undergo imprisonment for 9 months. The further reasoning is that Section 17 of the Bihar Municipal Act, 1922 does not speak of sentence being passed in a single case and thus the sentences passed on the same date amount to a sentence of 9 months in lieu of which the petitioner has been given the facility of paying fine of Rs. 1,500/- ; since the two sentences clubbed together exceed the period of six months as provided in the said provision, hence, it was held in the impugned order that the petitioner was disqualified from being a candidate at the election to the Nagar Panchayat, Dalsingsarai.

4. The relevant part of Section 17 of the Bihar Municipal Act, 1922 as amended by the Bihar Municipal (Amendment) Ordinance, 2001 is as follows:-

17. Disqualifications.-(1) Notwithstanding anything contained in this Act, a person shall be disqualified for election or after election for holding the post as member of the Municipality, if such person.....

(g) has been sentenced by a criminal Court, whether within or outside India, to imprisonment for an offence, other than a political offence, for a term exceeding six months or has been ordered to furnish security for keeping good behaviour u/s 109 or Section 110 of the Code of Criminal Procedure, 1973 (Act 2, 1974) and such sentence or order not having subsequently been reversed....

5. On a consideration of the aforesaid provisions, it is evident that a person would be disqualified for election to any Municipal Body, if he has been sentenced by a criminal Court to imprisonment for any offence, except a political offence. Secondly, such sentence of imprisonment must be for a period exceeding six months.

6. On a reference to the various provisions of the Indian Penal Code and other penal enactments, it is evident that generally two types of punishments are awarded (excluding the sentence of death) either singly or both or alternatively: one may be a substantive sentence of imprisonment and the other a sentence for

payment of fine of certain amounts. Sections 64 to 69 of the Indian Penal Code, 1860 deal with the matter of sentence of imprisonment for non-payment of fine. Section 64 is quoted below:-

64. Sentence of imprisonment for non-payment of fine.-In every case, of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, in which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

7. It is evident that so far as Section 17(1)(g) of the Bihar Municipal (Amendment) Ordinance, 2001 is concerned, it speaks of a person being disqualified on a substantive sentence of imprisonment being awarded to him, and not merely a sentence of fine, and further the said sentence itself must exceed the period of six months. The sentences of imprisonment exceeding six months are generally awarded by the Courts for offences of a graver nature whereas the sentence of imprisonment up to six months is awarded when the offence committed is not so serious and where the offences are of even lesser extent then generally only a sentence of fine is awarded. It is further to be found in the penal enactment that many times the sentence of fine is to be awarded in addition to substantive sentence of imprisonment. It is clear from Section 64 I.P.C. that the liability to undergo imprisonment upon non-payment of fine in itself is not a substantive sentence and it only follows upon the default by the accused in payment of fine and is in the nature of a coercive measure so as to compel the accused person to pay the fine that has been awarded by the Court.

8. In the light of the aforesaid discussions, it is evident that the District Magistrate-cum-District Election Officer has completely misread the provisions of Section 17(1)(g) of the Bihar Municipal Act, 1922. In the two cases to which reference has been made in the impugned order dated 11.3.2002, there has been no sentence of imprisonment awarded at all, rather the substantive sentence was for payment of fine of Rs. 1,000/- in the first case and Rs. 500/- in the other case and only in lieu of payment of the same, it was provided that the petitioner would have to undergo imprisonment for six months or three months respectively. Thus, the petitioner was not at all sentenced to any imprisonment by any Criminal Court, not to speak of imprisonment for a term exceeding six months as has been enumerated in the said provisions for disqualifying him for election to the Municipality.

9. this Court also finds that the District Election Officer has committed a further mistake in trying to add up the two separate sentences awarded by the Court

below. The sentence of imprisonment, which disqualifies any person, has to be that by the Criminal Court itself and that sentence should exceed a term of six months. It is not open to the Election authorities to club all sentences to arrive at a conclusion that sentence for more than 6 months imprisonment has been awarded since, no such provision has been made in the Municipal Act and any such restrictive provision has to be strictly construed.

10. In the light of the aforesaid discussions the impugned order dated 11.3.2002 is quashed. However, since the election to the Urban Municipal Body has already been followed by another fresh general elections, no further consequential effect shall follow upon the setting aside of the said impugned order. The writ application is, accordingly, disposed of.