

(1995) 04 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 13570 of 1992 with M.C.J.C. No. 01 of 1994

Md. Wasi Ahmad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Citation : (1995) 04 PAT CK 0043

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In the writ petition the prayer is for quashing of the notification No. 4319 dated 7.12.1992 (Anexure 1) whereby, in exercise of the powers u/s 186 of the Bihar and Orissa Municipal Act, 1922 an ad-hoc. Committee was constituted for managing the administration and functioning of the Munger Municipality.

2. The short facts are that the Petitioners were elected as Municipal Commissioners of the said Municipality in the said 1983 for five years, which they completed on 10.9.1988. Before expiry of their tenure the Joint Secretary in the Urban Development Department vide letter contained in memo No. 1928 dated 27.4.1988 communicated the Government decision to all the Divisional Commissioners and District Magistrates to commence the election process under the Bihar Municipal Election and Election Petition Rules, 1953 soon, so that where the tenure of 5 years in Municipalities were going to be completed, the elections are completed in time, while attaching a list of such Municipalities, which included the name of the Munger Municipality, the Divisional Commissioner and the District Magistrate were requested to take immediate steps in regard to the above from their level by issuing an order to such Municipalities and also to inform the Government about the action taken. A xerox copy of the said letter has been annexed as Annexure 2.

3. In reply to the said letter the District Magistrate, Munger, vide annexure 2 informed the Joint Secretary that the Executive Officer of the Municipality in his

report dated 6.7.1988 has reported that there is no proposal for extension of the area and reconstitution of the ward in the said Municipality and accordingly he requested for taking action under the aforesaid Rules and further to intimate the date for holding of election soon. Curiously enough instead of taking steps in the direction for holding of election of the said Municipality the Deputy Secretary to the Government of Bihar in the Urban Development Department (Respondent No. 1) vide letter dated 24.11.1988 issued a show cause notice to the Municipal Commissioner to show cause within fifteen days as to why the said Municipality should not be superseded with the threat the failing thereof the Government will take ex-parte decision in the matter. The Petitioner No. 2 along with the then Chairman of the Municipality Sri Ganesh Prasad Sharma filed a writ petition bearing C.W.J.C. No. 189 of 1989 in this Court praying for quashing of the aforesaid notice. The said writ petition was heard by a Division Bench comprising of Hon"ble the then Acting Chief Justice and Hon"ble Mr. Justice S. Hoda on 29.3.1989 and their Lordships passed the following orders:

Heard learned Counsel for the Petitioners and Mr. D.N. Singh, learned Standing Counsel No. 5 for the Respondents. On the facts and in the circumstances of the case it is most fit and appropriate that instead of the Municipality being under the control of Executive Officer for a long time to come, if not ad-indefinitum, the election which is already overdue of the Municipal Commissioners of the Munger Municipality, is concluded in accordance with law, which means the Bihar and Orissa Municipal Act, 1922 and Bihar Municipal Election and Election Petition Rule, 1953 within a period of four months from today. In the meantime however, it is made clear that the Petitioners will have no say in the administration of the Executive Officer of the Municipality who is incharge of the same and shall continue to hold the same during these four months only. The Respondents concerned are accordingly directed to start and conclude the election of the Municipal Commissioner within a period of four months from today.

With the aforesaid observation and direction this application is disposed of.

Let a copy of this order be handed over to Mr. D.N. Singh, learned Standing Counsel No. 5 for communicating the same and for doing the needful.

4. It is alleged that the Respondents second party namely the District Magistrate and the Sub-Divisional Magistrate, Munger did not take any step for holding of the election even after the receipt of the said order of this Court and the Petitioners were just being misled and told that positive steps were being taken for holding of the election.

5. On 7.12.1992 the impugned notification contained in annexure-1 was issued purporting to be in exercise of the power u/s 386 of the Act constituting an ad-hoc committee for the administration of the Municipality till further orders against which the present writ application was filed on 23.12.1992.

6. On 8.4.1993 the matter was adjourned to 22nd April, 1993 and the Respondents were directed to file counter affidavit if any, by 19th April, 1993

after serving its copy on the learned Counsel appearing for the Petitioner. Further, the Division Bench of this Court directed the Secretary, the Joint Secretary and the Dy. Secretary of the Urban Development Department, Government of Bihar, Patna to be present in court on that day, when the stay petition at flag "A" was also directed to be considered. At the request a copy of the order was also directed to be handed over to the Learned S.C. 2 for its immediate communication to the Respondents concerned. On 22.4.1993 the Secretary, the Joint Secretary and the Dy. Secretary of the Department appeared before the Court and expressed regret for not complying with the direction made by this Court in its order dated 29th March 1989. They also explained that due to some change in the law, the direction could not be complied with and in any view of matter the election shall be held by December, 1993. After recording the said statement, the Court dispensed with personal appearance and directed the matter to be posted under the same heading on 26th April, 1993 to enable the Petitioner to file an application for impleading the members of the ad-hoc committee as Respondents. The said petition was filed and heard on 26.4.1993 by a Division Bench and in the interest of justice the Bench directed for addition of 33 persons described in para 2 of the said petition Respondent Nos. 6 to 38. Their Lordship also issued notices to the said Respondent to show cause as to why final and appropriate order may not be passed at this stage of admission itself.

7. Further, the court stayed the operation of the impugned order (Annexure-1) Finally on 20th August, 1993 the writ application was admitted for hearing and since the Respondents had already entered appearance, no notice was directed to be issued to any of them. Pending final disposal the interim order passed on 26.4.1993 was directed to continue.

8. A petition was also filed in the writ case to initiate a contempt of Court proceeding and on the prayer made by the learned Counsel for the Petitioners by order dated 11.5.1994 the said petition was directed to be converted into M.J.C. application. With the consent of the parties, the said matter was taken up on 5.9.1994 and after having heard the learned Counsel for the parties a contempt proceeding was initiated against the Secretary, Joint Secretary and the Dy. Secretary of the Urban Development Department, Government of Bihar who are Respondent Nos. 1 to 3 respectively in the writ petition, and notices were directed to be issued to them to show cause by 19th September, 1994 as to why they be not punished/convicted for acting in utter and intentional disregard of the orders passed by this Court and the writ petition with the contempt matter was directed to be listed on 19th September, 1994 as first case subject to part heard if any on which date the said contemnors were also directed to appear in person. A copy of the order was handed over to the learned G.P. 4 who appeared for the State and its officers for communication to the concerned officers. Separate show cause on behalf of the Secretary, Dy. Secretary and the Joint Secretary, Urban Development Department, Bihar have been filed.

9. The matters were heard on 20th January, 1995 when at the request of the learned G.P. the hearing was adjourned for 30th January, 1995. On 30th January, 1995 all the three contemnors namely, K.A.H. Subramanian, Alok Wardhan Chaturvedi and Girja Nandan Pd. Verma, Secretary, Joint Secretary and the Dy. Secretary respectively appeared in person. On the repeated queries made by me as to whether they need any more opportunity to file any further show cause and/or bring any other material/document on the record of this case in their defence, all the three officers answered in negative. The parties were heard, the hearing concluded and judgment was reserved. Accordingly, I proceed to decide this matter on the basis of the materials available on the records and the submissions made by the parties,

10. A counter affidavit has been filed in the writ case on behalf of the State of Bihar through the Secretary in the Urban Development Department and Joint Secretary of the said Department (Respondent Nos. 1 and 2). In the said counter affidavit while it is stated that it is not a fact that the Government did not take any step for holding any election in Munger Municipality within the time limit prescribed in the order of this Court passed in C.W.J.C. No. 189/89, it is also stated that while the Government was to initiate the process for election in the Munger Municipality the People's Representation Act was amended lowering down the age of voters from 21 to 18 years and this amendment necessitated corresponding amendment in the Municipal Act as well as in the Municipal Election Rules, and further also the revision of electoral rolls. According to the Respondents, the said factors consumed a lot of time and finally the amendment for lowering down the voter's age for Municipal Election was brought into force on 10th January, 1992. Thus, according to the said Respondents, in spite of the best intention of the Government, the election process remained deferred. A reference to the Constitution (73rd Amendment) Bill, 1991 has also been made under which the election has been made mandatory within one year from the date the said Bill becomes an Act after the presidential assent. The impugned notification constituting ad- hoc committee is stated to have been issued under first process 19(2) of the Bihar and Orissa Municipal Act, 1922 for managing the affairs of Municipality till a fresh elected-body is constituted. According to the Respondents, the Government had no intention to defer the election in Munger Municipality but the circumstance intervening after the order of this Court which were beyond the control of the Government kept the election process delayed on one account or the other, which is true not only in the case of Munger Municipality but also for several other Municipalities in the State.

11. Although an affidavit has also been filed on behalf of Respondent Nos. 6 to 38, but none appeared on their behalf. Thus, I do not consider any necessity to deal with it.

12. Show cause on behalf of the Secretary and Deputy Secretary of the Urban Development Department in the contempt matter were filed on 30.1.1995 after the hearing of the case had already commenced on 20.1.1995. In the show

cause filed on behalf of the Joint Secretary it is stated that he joined the department only in June, 1994 and that under misconception that the contempt proceeding had been initiated against the then Joint Secretary, who was present in court on 22.4.1993 the show cause on his behalf could not be filed earlier and for this act of omission he has tendered unqualified apology. Further, he has tried to explain that after his joining in the department in June, 1994 the election could not be held as the Bihar and Orissa Municipal Act, 1922 had to be amended in accordance with the Constitution 74th Amendment Act, which came into operation from 1st June, 1993 and finally the Act was amended in December, 1994. According to him, necessary steps had been taken to collect the details regarding the towns and their population etc. from the Collectors of the districts so that the same could be made, available to the State Election Commission and steps could be taken to hold election and to re-constitute the Municipal Body as per the amended provisions of the Act. It is also stated that steps have also been taken to formulate the Rules/Act. It is further stated that in the meantime, under the orders of the Election Commission of India intensive revision of the Electoral Rolls was also taken up in the State the process of which was completed in the first week of January, 1995. However, in paragraph 11 it is admitted that the order and direction of this Court could not be complied for which he has tendered unqualified apology. Further, a plea has been taken on behalf of the then Joint Secretary of the Department that it was not known to him about the details of the changes to be made in the Municipal Laws that were to be effected- in pursuance of the Constitution (74th Amendment) Act and thus, when he appeared before this Court on 22.4.1993 he made the statement that the election was going to be held by December, 1993. It is also stated that the deponent should have immediately informed this Court about the aforesaid and, should have prayed for more time to comply with the order.

13. Besides the above, another plea has been taken that in view of the General Assembly Election, the State Government could not take any policy decision regarding announcement of Municipal Election schedule, because of the model code of conduct issued by the Election Commission of India, which is effective from 8th December, 1994.

14. Similar plea has been taken in the show cause filed on behalf of the Deputy Secretary of the Department. The Dy. Secretary in his show cause has further stated that he joined the Department in May, 1994.

15. In the show cause filed on behalf of the Secretary of the Department, a plea has been taken that the election could not be held within the specified period as, the Act had to be amended in accordance with the provisions, of the Constitution (74th Amendment) Act which came into force with effect from 1st June, 1993. The Bihar Municipal Ordinance was duly promulgated on 30th May, 1994 and the same was finally converted into Act in December, 1994. The said amending Act envisages various changes in the constitution and functioning of the Municipal body like representative and reservation to the scheduled castes, scheduled

tribes and backward classes in proportion to their population, representation to the lady (woman) and constitution of the Election Commission etc. It is also stated that the said Election Commission has been duly constituted and election of the Municipal body is now to be held by the Commission. Rests of the pleas are same as have been taken in the show cause filed on behalf of the Joint Secretary and Dy. Secretary. Besides, it is further stated that the election to the Municipalities in all over the State of Bihar are going to be held as early as possible.

16. Learned Addl. A.G. 2, who appeared on behalf of the State of Bihar and its officers, as well as for the contemnors aforementioned fairly did not defend the action of the Respondents in constituting the ad-hoc committee for managing the administration and functioning of the Munger (Municipality under the impugned notification and at the outset submitted that the contemnors tender sincere apology and regret for non-compliance of the first order of this Court, for which no explanation even worth the name has been given by the said contemnors in their show cause. The learned Addl. A.G. also submitted that in fact on 22.4.1993 it should not have been stated by the contemnors before this Court that in any view of the matter the election was going to be held by December, 1993. According to him, the Bill in regard to 74th Amendment of the Constitution was pending, consideration by the Parliament since 1992 in which vital changes were in offing, and thus, it was not possible/proper to conduct the election of the Municipalities. Further, he submitted that Section 19 of the Amending Act empowers only the State Election Commission to hold Municipal Election, which now has been constituted by appointing Mr. K.K. Saha as single man Commission and it was not within the control of the State Government or its officers to hold election.

17. Lastly, the Addl. A.G. prayed that in the peculiar facts and circumstances of this case, this Court may take lenient view, as there was no intention of the contemnors to flout the orders of this Court.

18. From the facts aforementioned, there cannot be any doubt that the State Government and its officers did not make any effort worth the name even to implement the first direction of this Court passed as far back as on 29.2.1989 in C.W.J.C. No. 189/89 in which the Division Bench of this Court considered fit and proper that instead of the Municipality being under the control of the Executive Officer for a long time to come, if not ad-infinitum the election, which is already overdue, of the Municipal Commissioners of the Munger Municipality should be completed in accordance with law, within a period of four months from the date of the order and accordingly directed Respondents concerned to start and conclude the election of the Municipal Commissioners within a period of, four months from the date of" the order. In the meantime, the Executive Officer of the Municipality was allowed to continue to hold the charge of the administration of the Municipality. The said period of four months fixed by this Court expired on 29.7.1989 itself. Instead of complying with the said direction, the impugned

notification was issued on 7.12.1992 constituting an ad-hoc committee for managing the administration and functioning of the Munger Municipality in utter disregard to the aforementioned direction. In my opinion, such an action of the Respondents cannot be said to be free from malafide and also an intention to disregard the order of this Court, inasmuch as in view of the aforementioned earlier order dated 29.3.1989 the Respondents had no authority to constitute an ad-hoc committee. The Respondents did not even bother to get the period fixed for conclusion of the election by the said order modified/extended. A peculiar vague plea has been taken in the counter affidavit filed on behalf of the Respondent Nos. 1 and 2. It is stated that delay has been caused in implementing the order of this Court in C.W.J.C. No. 189/89 due to unavoidable reason. I am unable to appreciate this inasmuch as when the order has, not been implemented at all till date, where is the question of delay being caused in implementing the order passed in C.W.J.C. No. 189/89. If according to the Respondents, the constitution of the ad-hoc committee under the impugned notification amounts to implementing the aforesaid order of this Court, then there cannot be two opinions that by issuing the impugned notification the Respondents have wilfully and intentionally acted in utter disregard of the order passed by this Court, which is a gross contempt as it substantially interferes with the due course of Justice.

19. The intention of the Respondents to show disrespect to the orders passed by this Court is further evident from the fact that even on 22.4.1993 they attempted to mislead this Court by making false statement that election was going to be held by December, 1993 and this Court taking, lenient view dispensed with their personal appearance after recording the said statement, so much so that on the one hand, the Secretary, Joint Secretary and the Deputy Secretary, who appeared in person on 22.4.1993, in their explanation stated that due to some changes in law, the direction could not be complied with, whereas, in show cause filed by them, it is stated that at that time it was not known to the then Joint Secretary of the Department about the details of the charges to be made in the Municipal laws. The statement was not made by the then Joint-Secretary alone, but the Secretary and the Dy. Secretary also. In fact, there was no change made until then," as according to the Respondents themselves, the Constitution 74th Amendment Act came into effect from 1st June, 1993 and according to the same, changes in the Municipal Laws in the State was brought in for the first time by an Ordinance dated 30th May, 1994. In the show cause filed on behalf of the contemnors the then Joint Secretary has been sought to be made scape goat. In my opinion, all these are lame excuses on the basis of which, the repeated intentional non-compliance of the orders by the Respondents are being sought to be justified.

20. Moreover, I fail to appreciate as to what prevented the authorities from holding the elections atleast by December, 1993 as was stated to them on 22.4.94 when the Municipal Act for the first time was amended after five months by the Ordinance dated 20.5.1994.

21. Their intention not to implement the directions of this Court is also evident from the another lame excuse of the General, Assembly Election taken in the show caused for not holding the election even after promulgation of the Ordinance amending Municipal laws on 30.5.1994. It is stated that the State Government could not take a policy decision regarding announcement of municipal election because of the model Code of Conduct issued by the Election Commission having come into effect from 8th December 1994. This plea of the Respondents is nothing but a malafide attempt to cover their intention not to hold the election of the Municipal Commissioner of Munger Municipality which has been kept deferred so far since 1989 on one pretext or the other even after specific direction of this Court given as far back as on 29.3.1989. If the model code of conduct issued by the Election Commission of India came into effect on 8th December, 1994, then what prevented the Respondents from taking steps for holding the election between 30.5.1994 when the amendment in the Municipal law was made and 8.12.1994 when the model code said to have come into effect.

22. Further, learned Additional Advocate General ventured to submit that in the circumstances of this case the Court should take lenient view of the matter and should not require compliance of an order impossible of compliance at the instance of the Respondents/opposite parties, who do not have any authority now. In support of this fact he placed reliance on the decision of the apex court in the case of Mohd. Iqbal Khanday Vs. Abdul Majid Rather,

23. I fail to understand as to how the said decision of the Supreme Court in the facts of the present case in any manner helps the learned Additional Advocate General. The Supreme Court, in the said case held that the Court must always be zealous in preserving its authority and dignity but at the same time it will be inadvisable to require compliance of an order impossible of compliance at the instance of the persons proceeding against for contempt. In the same decision the apex Court also held that the Appellant cannot ignore the order and plead difficulties of implementation at the time contempt proceedings are initiated.

24. In the present case, the Respondents always kept on ignoring the order and only when the contempt proceeding has been initiated, took the plea that now the law vests power in the State Election Commission to conduct the election in the Municipality and thus, it is impossible for the Respondents/opposite parties to comply with the said direction. Even an apology has been tendered at the far end of the proceeding and earlier so that an attempt was made by them to justify their conduct for not complying with the order of the court by giving lame excuses without any basis or supporting material.

25. The plea of the Respondents that now the election is to be held by the State Election Commission and not the State Government has nothing to do with the same equally appears to be a malafide plea and cannot be sustained. The provision empowering the State Election Commission for conducting the election in the Municipality has been introduced for the first time by Bihar (Amendment) Ordinance, 1994 which, according to the case of the Respondents, came into

force from 30.5.1994 whereas the direction by this Court was issued six years earlier, i.e. on 9.3.1989 when the said power was not vested in the Election Commission. Moreover, in December, 1992 the Government instead of holding the election in compliance of the aforesaid order of Court, in purported exercise of its power u/s 386 of the Act issued the impugned notification constituting an ad-hoc committee for the administration of the Municipality till further orders. On 22.4.1993 the operation of the same was stayed and the personal appearance of the opposite parties was dispensed with by this Court on their statement that the election was going to be held by December, 1993, but no step at all was taken in that direction and now after initiation of this proceeding the plea of constitution of the State Election Commission has malafide been taken by the Respondents.

26. In my opinion, in the facts and circumstance aforementioned, it will be setting a bad example and would encourage litigants to flout the orders of the court with impunity, if such pleas of the contemnors are accepted and the intentional lapses are allowed to be condoned.

27. The Supreme Court in the case of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, while discussing the maxim "Salus Populi Suprema Lax" i.e. the welfare of the people is the supreme law, held that "... This can be achieved only when justice is administered lawfully, Judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained".

28. In the result, the writ application is allowed and the impugned notification, contained in annexure 1, is quashed. In the facts and circumstances aforementioned, it would be travesty of justice if the Court allows such gross contempt of court to go unpunished. Accordingly, the following order/sentence is passed. The contemnors are directed to pay a fine of Rs. 2,000/- (two thousand) each to be deposited in this Court within one week from today or in default, to undergo simple imprisonment for a period of one month. Further, the Respondents are directed to start the process of election in question and also inform the State Election Commission of this order, which shall comply the same and conduct the election without any further delay. The Respondents shall report compliance of the said order of this Court by filing an affidavit within one week.

29. Let a copy of this order/sentence be forwarded/supplied to all concerned, including the State Election Commission.