

(2000) 04 PAT CK 0103

In the Patna High Court

Case No : C.W.J.C. No. 3061 and 3089 of 1998 (R)

Prof. Rabindra Nath Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

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

Citation : (2000) 2 BLJR 1352 : (2000) 4 PLJR 139

Hon'ble Judges : S.K. Chattopadhyaya, J;N. Pandey, J

Bench : Division Bench

Judgement

N. Pandey, J.—Both the writ petitions have been filed for quashing the notification of the State Government dated 8.9.1998 issued in exercise of its power u/s 29 of the Bihar Municipal (Amendment) Act, 1994 whereby and where under the Jamshedpur Notified Area Committee was dissolved with immediate effect with a direction to the District Magistrate to depute a responsible officer under him to look after the day-to-day function of the Notified Area Committee.

2. Undisputedly, until the date of the above mentioned notification of the State Government functions of the Jamshedpur Notified Area Committee was being looked after by the duly-elected/nominated members of the said committee under the provisions of The Bihar Municipal Act, 1922, term of which expired on 11.3.1997 on completion of a period office years. It would be relevant to mention that extensive amendments were carried out in the Municipal Act, 1922 by Bihar Ordinance No. 13 of 1994 which was later substituted by Bihar Act 2 of 1995 (hereinafter referred to as the Act). The provisions of the Act, as they now stand, contemplate automatic cessation of the terms of the office of the elected Chairman, Commissioners, etc, of the duly constituted municipalities or the notified area committee, as the case may be.

3. As per Section 29 of the unamended Act, 1922, elected commissioners are to hold office for five years commencing from the date of the general election of the commissioners of the municipality and Chairman, whether elected or appointed.

On 1.6.1993, the Constitutional 74th Amendment came into effect and the provisions relating to constitution of the municipalities in the State were incorporated in Part IX-A of the Constitution. The Bihar & Orissa Municipal Act also having regard to the command of the amended provisions of the Constitution, was amended accordingly. Because in view of Articles 243Q and 243ZF of the Constitutional amendment, the State Government was required to amend its respective laws in tune with the Constitutional amendment within a period of one year.

4. Articles 243 to 243Z of Part IX-A of the Constitution are the provisions relating to the constitution of the municipalities, its duration and functions. As per Article 243Q, every State shall constitute a municipal council for smaller urban area and a municipal council for larger urban area. Article 243U contemplates that every municipality until 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, prior to the terms, whereas Article 243U(2) prescribes a criteria for election and constitution of the municipality.

5. Undisputedly, Section 29 of the amended Municipal Act is in conformity with the provisions prescribed under Article 243U of the Constitutional amendment that every municipality until sooner dissolved under any law for the time being in force, shall continue for a term of five years from the date of its first meeting and "no longer". There is no provision for extension of the term of the municipality as it was available under the unamended Act.

6. It would further appear that Article 243ZF contemplates continuance of laws and municipalities in existence immediately before the commencement of the Constitution (74th Amendment Act, 1992), as under:

243-ZF Continuance of existing laws and Municipalities.--Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

From a close reading of the aforesaid provisions, it would appear that outer limit of one year was fixed to bring necessary amendments in any provision of any law relating to municipalities in force in a particular State before incorporation of Part IX-A of the Constitution consistent with the provisions contained in the said Part.

In other words, anything inconsistent with the provisions of this part may continue to be in force until amended or repealed by a competent Legislature or any other authority or till expiration of one year from the date of such commencement whichever is earlier.

7. The question that arises for consideration is whether Jamshedpur Notified Area Committee, which had not yet completed the term of five years as on 1.6.1993 can be allowed to continue in view of the second proviso to Section 390C of the Act until constitution and the first meeting of the newly-elected body under the provisions of the amended Act. It is not in dispute that under Sections 388 and 389 of the old Act, the State Government had the power to constitute a Notified Area Committee for the purpose of the old Act in an area specified by the notification other than a municipality or a cantonment. By the amending Act, now Section 388 of the old Act has been deleted. In such a situation, therefore, the State Government is not now required to constitute a notified area committee as it was provided under the old Act. Keeping in view the facts noticed above in my view the words "...and the Notified Area Committee" which was validly constituted under the B.O. Municipal Act, 1922, shall continue to function till the constitution and the first meeting of the Municipality" as entered in the second proviso, in fact, is redundant for the purpose of a Notified Area Committee. Because in view of the changed situation henceforth there shall be no notified area committee.

8. Section 389 of the Act, as it now stands, empowers the State Government to impose taxation, apply enactments and constitute committees for the industrial township, if any. The State Government, therefore, may by notification:

(a) apply or adapt, to an industrial township or part of an industrial township, as may be notified under Sub-section (4) of Section 4, any provision of this Act which may be applied to a municipality or any rule or bye-law in force or which can be made in any municipality under this or any other Act.

(b) impose in an industrial township or any part thereof any tax which could be imposed by the Commissioners, as if the industrial township were a municipality ; and

(c) appoint or make rules for the appointment of committee to carry out the purposes of this Act in the industrial township.

9. From a bare reference to the facts noticed above, it is apparent that no provision under the amended Act now exists for constitution of a Notified Area Committee either with respect to urban area or industrial township as may be notified under Sub-section (4) of Section 4 of the Act. Thus, in view of the provisions of Article 243U of the Constitution (74th Amendment Act, 1992) read with Section 390C of the amended Municipal Act, all the Notified Area Committees shall cease to function on the commencement of such Act, a reference in this regard can be usefully made to a decision of this Court in the case of *Rajendra Prasad Gupta Vs. The State of Bihar and Others*, . Therefore,

there appears no substance in the prayer of the petitioners for the continuance of the outgoing Notified Area Committee.

10. Learned Counsel, however, contended that the Notified Area Committee in question had been constituted in terms of the proviso to Sub-section (2) of Section 29 read with Section 386 of the Act as it then stood prior to which several amendments were carried out in the Act by Bihar Ordinance No. 13 of 1994. Therefore, in view of the second proviso to Section 390C, as inserted by the amending Act, the municipalities and Notified Area Committee, which were validly constituted under the Municipal Act, 1922 shall continue to function till constitution and the first meeting of the Municipality.

11. For a proper appreciation, it would be apt to quote the relevant provisions of Section 390C as under:

390C. Savings.-(1) The Municipalities, and the Notified Area Committees on the commencement of this Act shall cease to function as such and the same, shall be constituted, in the manner and under the provisions of this Act and such area may be declared, by notification in accordance with the provisions of Sub-clause (i) and (ii) or Clause (a) of Sub-section (1) of Section 4 of the Act as Municipal Council or Nagar Panchayat as the case may be:

Provided...

Provided further, notwithstanding the provisions of this Act. the Municipality and the Notified Area Committee which were validly constituted under the B. & O. Municipal Act, 1922 (B & O. Act 7, 1922) shall continue to function till the constitution and the first meeting of the Municipality. (2)...(3)....

12. It was contended although the provisions of this Act as they now stand, contemplated automatic cessation of the terms of the office of the elected Chairman/Commissioners Exit in view of the saving clause u/s 390C, which says about continuance of the municipality and notified area committee on the date of commencement of the ordinance which came into effect on 30.5.1994 and by reason of this amendment, the municipality or Notified Area Committee, which had been validly constituted under the old Act shall be allowed to continue to function till constitution of the first meeting of the committee. This was done only for a purpose not to create a void. Reference in this regard was made to a decision of this Court in the cases of Bibhash Chandra Choudhary and Ors. v. State of Bihar and Ors. 1995 (1) PUR 228 Bratendra Prasad Singh. The State of Bihar 1996(2) PLJR 443 and yet another decision at the same volume page 445 in the case of Nand Kishroe Singh v. The State of Bihar and Ors.

13. In my view, there is no substance in such a submission because as pointed out by the learned Counsel appearing for the contesting respondents as well as the State, that having regard to the decisions of the Court in the cases of Baleshwar Prasad Yadav v. State of Bihar and Ors. 1997 LPA 1257 , disposed of on 16.1.1998 and Md. Islamuddin v. The State of Bihar and Ors. 1997 LPA 1190 ,

disposed of on 11.8.1998 as well as another decision of a learned Single Judge in C.W.J.C. No. 664 of 1997 *Bijay Kumar Gupta v. The State of Bihar and Ors.* disposed of on 2.2.1999, the question regarding scope and applicability of the second proviso to Section 390C is no longer *res Integra*. It has already been held that by Virtue of the amendment dated 1.6.1993 the provisions of Article 243U have been incorporated in the Constitution of India as a result of which the period of duration of the Municipal Committee or Notified Area Committee shall be five years from the date appointed for the first meeting and "no longer". Therefore, in view of the words "no longer" used under Article 243U, the second proviso of Section 390C of the amendment Act does not survive. From a bare reference to the cases as reported in 1995 (1) PLJR 228 (*supra*) or 1996 (2) PLJR 443 (*supra*) it would appear, that all these questions were¹ neither raised nor considered, the referred not binding for the purpose of interpretation of these statutory provisions as discussed above.

14. The alternative submission of the petitioners is for a direction to the State Government to issue an appropriate notification under Sub-section (4) of Section 4. of the amended Act to declare Jamshedpur an industrial township and to appoint a committee to carry out the aims and object of the Act.

15. It would appear from the facts on record including the copy of the letter dated 28.8.1994, contained in Annexure 3 to the second writ petition that in this regard from time to time requests were also made to the State Government but no notification has yet been issued. From a bare reference to the provisions of Section 389 of the amended Act, it would appear that the State Government in order to impose taxation as well as to carry out the other purposes of the act is required to constitute a committee in an industrial-township. As per Sub-section (a) of Section 389, the State Government may apply or adapt to an/industrial township or a part of any industrial township, as may be notified under Sub-section (4) or Section 4 any provision of this Act, which may be applied to a municipality or any rule or bye-laws in force or which can be made for any municipality under this or any other Act, Sub-section (b) is a provision for appropriate notification for imposition in an industrial township or any part thereof any tax which can be imposed by the commissioners, as if the industrial township was municipality and (c) is for appointment of a committee to carry but the purposes of the Act in an industrial township.

16. Thus, now from a bare analysis of different provisions as noticed above, it would appear that the power of the State Government for Constitution. of a committee u/s 389 can only be exercised with respect to an industrial township as defined u/s 3(11A) of the amended Act which means such urban area or part thereof as may be specified by the State Government by public notification having regard to the size of the area and the municipal services, provided or proposed to be provided by the industrial establishment in that area.

17. According to the respondents, as would appear from the notification dated 23.11.1990 as contained in Annexures R/3-B of the counter-affidavit the State.

Government had, in fact, declared its intention under Sub-section (1) of Section 390A of the unamended Act, 1922 to convert the Notified Area into a Municipality. Therefore, it would not be open for the petitioners to claim declaration for Jamshedpur as Industrial Township under the provisions of the amended Act whereas it was pointed out on behalf of the petitioners that the decision of the State Government was never notified to convert the Notified Area Committee to a municipality nor any municipality was ever constituted. In fact, admittedly until 8.9.1998 impugned notification was issued, the Notified Area Committee was functioning.

18. In my view, having regard to the facts noticed above, there appears no substance in the submission of the respondents. Because from a bare reference to Section 4 of Chapter-II of the amended Act, it would appear that the State Government is now required to declare its intention to constitute or alter the outers limit of a municipality. Sub-section (4) of Section 4 as amended requires the Government to establish and specify and Industrial township" as defined u/s 3(11) of the Act for an urban area. Therefore, to apply the purposes of the Act to an industrial township, the moment a notification is issued u/s 4(4), neither any municipality nor a Notified Area Committee can be constituted. It would further appear that as the provisions now stand the State in order to impose taxation and apply the provisions of this enactment, is also required to constitute, a committee for such Industrial township u/s 389 of the amended Act whereas under the Old Act, the Government was not required to observe these formalities. That apart, as I have already noticed, in spite of the "notification contained in Annexure R/3-B, no municipality was ever constituted at Jamshedpur and as such the notification committee continued until the impugned notification.

19. Therefore, in view of the replacement of the relevant provisions of the Bihar Municipal Act, 1922, by the amending Act, it will now be the duty of the State Government to come out with a specific notification forthwith in order to carry out the purposes of the Act failing which the void, which has been created would certainly lead to an anomalous situation.

20. On behalf of the petitioners a grievance has also been made against the second part of the impugned notification (Annexure 1) whereby the District Magistrate was authorised to depute an officer under him to look after the functions of the Notified Area Committee. It is stated that such decision of the State Government is wholly illegal and without jurisdiction. Neither with respect to the area in question, a notified area committee can be constituted under the unamended Act nor for an area which may be notified u/s 4(4) of the Act, the District Magistrate will have any jurisdiction to constitute a committee or depute any officer under him to any out the purposes of the Act. Because even the respondents have also not been able to deny that entire functions for civic amenities are being performed by the TISCO management. Therefore, any interference in this regard would in fact be against the public interest.

21. On the other hand, learned Counsel for the State as well as other respondents contended that in view of the void created by the replacement of the relevant provisions of the unamended Act, the State Government had no option but to authorise the District Magistrate to look after the day-to-day functions of the outgoing Notified Area Committee until an alternative arrangement is made as per of the provisions of the amended Act.

22. In my view, undisputedly, such an alternative arrangement, cannot be said to be arrangement which is required to be made by the State Government either u/s 389 of the amended Act. It would not be out of place to mention that having faced with such a situation, this Court while disposing of C.W.J.C. No. 8394 of 1994 and 7501 of 1993 had strongly condemned the activities of the Government for constituting ad hoc committees for different municipalities from time to time and specific direction was issued that functions of such municipalities or Notified Area Committees, as the case may be, should be looked after by the Special Officers/Executive Officers of the Municipalities.

23. Similar situation like the present one had also arisen before the apex Court in the case of 1997 (1) PLJR 129 (SC) , when a prayer was made on behalf of the State to allow the representatives of the Gram Panchayat, Block/Panchayat Samitees and Zila Parishads of this State to function until fresh elections are held under the provisions of the amended Gram Panchayat Act. The apex Court while rejecting the prayer deprecated such practice and directed thus:

4. ...that with immediate effect, the administration of all Gram Panchayats, Zila Parishads and Block/Panchayat Samities in the State, of Bihar will be under the overall charge of District Collectors. Such authority will administer the duties and functions of the said bodies in the district under his jurisdiction through Block Development Officers and Panchayat Sewaks and such Government officials under his control as he may deem expedient and proper. The elected members of all such bodies will cease to function and be held to have vacated their respective office. Liberty is given to take further direction from this Court, if necessary.

In my view, having regard to the views expressed by the apex Court which was in fact taken in an identical situation, it would not be proper to quash the second part of the notification. But in the facts and circumstances of the case, as well as the statutory requirements as noticed above, I direct, the State Government to dispose of the representation filed on behalf of the petitioners as contained in Annexure 3 and to issue appropriate notifications forthwith under the provisions of the amended Act to obviate the void which has now been created with respect to the area of the Jamshedpur industrial township.

24. In the result, with the above direction/observation, these writ applications are thus disposed of.

S.K. Chattopadhyaya, J.

I agree.