

**(1997) 09 PAT CK 0087**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 102 of 1996

Rajendra Prasad Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

**Date of Decision :** 12-09-1997

**Acts Referred:**

Bihar Municipal (Amendment) Ordinance, 1994 — Section 25, 3(11), 389

Bihar Municipal Act, 1922 — Section 29(2), 3(11), 38, 388, 389

General Clauses Act, 1897 — Section 24

**Citation :** (1998) 1 PLJR 122

**Hon'ble Judges :** S.N. Jha, J;S.J. Mukhopadhaya, J

**Bench :** Division Bench

**Advocate :** Subhro Sanyal, for the Appellant; Awadhesh Kumar Mishra and Shashi Ranjan for Respondents No. 3 and 4, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.N. Jha, J.—This appeal under Clause 10 of the Letters Patent of Patna High Court arises from order of the learned Single Judge dated October 19, 1995 in CWJC No. 3297 of 1995.

2. The writ Petitioners, Respondent Nos. 3 and 4 herein, filed the above-mentioned writ petition for quashing the notification dated August 25, 1994 whereby the State Government in purported exercise of power u/s 389(c) of the Bihar Municipal Act, 1922 (the Act, in short) read with Section 24 of the General Clauses Act, 1917 had constituted a Committee, consisting of the members as mentioned therein to manage the affairs of the Ramnagar Notified Area. The learned Single Judge held that by reason of the amended provisions of Section 389(c) the Government is competent, to constitute such a Committee with respect to industrial townships alone. The Ramnagar Notified Area not being an industrial township, the same was not amenable to the said provision. The impugned notification dated August 25, 1994 was therefore illegal and without jurisdiction. The learned single Judge accordingly quashed the notification.

3. The Appellant herein is the Vice Chairman of the Ramnagar Notified Area Committee. He filed this appeal on January 22, 1996. Later, on objection as to maintainability of the appeal on the ground that he was not a party to the writ petition, he filed an application seeking leave to appeal. By order dated March 27, 1997 leave was granted. On June 25, 1997 counsel for the writ Petitioners entered appearance. The appeal was finally heard on September 5, 1997.

4. Mr. Subhro Sanyal, learned Counsel for the Appellant assailed the order of the learned Single Judge on the ground that he overlooked the provisions of Section 390C of the Act which contemplates continuance of validly constituted Municipalities and Notified Area Committees till the constitution of the new Municipality/Committee and holding of the first meeting thereof. He place reliance, on *Bratendra Prasad Singh v. State of Bihar*, 1996 (2) PLJR 443.

5. I am afraid, neither Section 390C of the Act nor the above-said decision is of any help to the Appellant. In the cited case the learned Single Judge, had rejected the petition seeking directions to allow the Ad hoc Committee constituted by the State Government for the Barharia Municipality in terms of the proviso to Sub-section (2) of Section 29 of the Act, as it stood earlier, to function till regular elections are held for the said Municipality. In the letters patent appeal it was argued on behalf of the Appellant that the Ad hoc Committee in question was saved by the second proviso to Section 390C as inserted by the Bihar Municipal (Amendment) Ordinance, 1994 and the same, therefore, should be allowed to continue. The argument was rejected by the Division Bench. It was held that an Ad hoc Committee constituted in terms of the proviso to sub-section (2) of Section 29 of the parent Act cannot be treated at par with a duly constituted Municipality/Notified Area Committee within the meaning of second proviso to Section 390C.

6. At this stage Section 390C, as amended and so far as relevant, may be noticed as under:

309C. Savings.-(1) The Municipalities, and the Notified Area Committees on the commencement of this Ordinance shall cease to function 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-clauses (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 that....

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

It would appear that while the main Section provides for automatic cessation of the municipalities and the notified area committees in existence, on the

commencement of the Ordinance, i.e. May 30, 1995, to be replaced by a new Municipality/Notified Area Committee constituted in the manner laid down in the Amendment Act, the second proviso saves the existing Municipalities/Notified Area Committees. The reason is obvious. If the Municipalities/Notified Area Committees do not function it would create vacuum. There will be no Local Body to manage the affairs and look after need of the people. Such a situation is not countenanced in law. It is in order to fill the vacuum created by the main provision of Section 390C that second proviso provides for its continuance till regular Municipalities/Notified Area Committees are constituted in accordance with the provisions of the Amendment Act. In the case of Bratendra Prasad Singh (supra) this Court was merely considering whether the benefit of second proviso of Section 390C would be available to Ad hoc Committee constituted under proviso to Sub-section (2) of Section 29. This Court held that it did not. The decision therefore has no relevance in this case.

7. In the present case, the point for consideration is whether the State Government is competent to constitute a Committee for a notified area, namely, Ramnagar Notified Area by virtue of provisions of Section 389(c) as amended by the aforesaid Ordinance (later Bihar Act 2 of 1995). Section 389(c) of the Act, as amended by Section 25 of the Bihar Municipal (Amendment) Ordinance, 1994/ Act 2 of 1995, so far as relevant, runs as follows:

389. Power to impose taxation in, apply enactments to and constitute committee in the Industrial Township. The State Government may, by notification-

(a) ....

(b) ....

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

Clause (c) of Section 389 of the parent Act was as follows:

appoint or make rules for the appointment of election of a committee to carry out the purpose of this Act in the "notified area".

After the amendment, thus the power is to be exercised only with respect to "Industrial Township" and not "Notified Area" as in the Parent Act. Similarly, the power can be exercised only to appoint a Committee or frame rules for appointment and not to frame rules for election, as in the Parent Act. Section 388 of the Act empowers the State Government to apply the provision of the Act to any area specified in the notification other than a Municipality or a Cantonment; such area is to be known as "Notified Area". It was with respect to any such "Notified Area" that the State Government was competent earlier, inter alia, to appoint a Committee to carry out the purpose of the Act. By reason of the amended Provision, noticed above, now the power can be exercised with respect to Industrial Township" alone. The term "Industrial Township" has been defined u/s 3(11a) of the aforesaid Ordinance/Act to mean 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 being provided or proposed to be provided by an Industrial establishment in that area and such other factors as the State Government may deem fit. It would not be out of place to mention here that extensive amendments were introduced in the Bihar Municipal Act, 1922 by the aforesaid Ordinance, namely, Bihar Municipal (Amendment) Ordinance, (Bihar Ordinance No. 13 of 1994 replaced by Bihar Ordinance No. 17 of 1994 and ultimately by Bihar Act 2 of 1995) in consonance with the provisions of Part IXA of the Constitution of India.

8. It is not in dispute that Ramnagar Notified Area is not an "Industrial Township" within the meaning of Section 3(11a) of the Act. The power of the State Government to constitute Committee u/s 389(c) being confined to only "Industrial Townships" and not "Notified Areas", it is obvious that the impugned notification dated 25.8.94 was completely without jurisdiction.

In these premises, the order of the learned Single Judge quashing the same cannot be said to be erroneous.

9. In the result, I do not find any merit in this appeal which is, accordingly, dismissed. No cost.