

(1985) 02 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1219 of 1984 (R)

Ram Kishore Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Patna Municipal Corporation Act, 1951 — Section 545
Patna Municipal Corporation Preparation of Electoral Rolls and Conduct of Election Rules, 1953 — Rule 29

Citation : AIR 1986 Patna 344 : (1985) 33 BLJR 406

Hon'ble Judges : Udai Pratap Singh, J

Bench : Single Bench

Advocate : Ram Kishore in Person and B.B. Sinha, for the Appellant; K.P. Verma, General, T.K. Das, Standing Counsel, M.M. Pal, Sohail Anwar and H. N. Ojha and Jr. Counsel to Standing Counsel, N.K. Prasad, P.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Udai Pratap Singh, J.—By this writ application filed by the Secretary, Free Legal Aid Clinic, Ranchi, the petitioner prayed for a writ of mandamus directing the respondents to conduct and hold the election of the Ranchi Municipal Corporation, which has not been done since it came into existence from 15-9-79. On request made by the petitioner, Sri B.B. Sinha, Advocate appeared as Amicus curiae and Sri P.K. Sinha, Advocate, who appeared as an intervenor, also rendered assistance to the Court.

2. Ranchi Municipal Corporation was established and constituted under the Bihar Municipal Corporation Act (Bihar Act 12 of 1978). By Govt. notification No. S. O. 1408, dt. 15-9-79, the provisions of the Patna Municipal Corporation Act 1951 (Bihar Act 13 of 1952) was made applicable to the Ranchi Municipal Corporation.

3. Before the establishment of the Corporation, two municipalities were functioning under the Bihar and Orissa Municipal Act 1922, one at Ranchi and the

other at Doranda. u/s 29 of the Bihar and Orissa Municipal Act 1922, the last election of the Ranchi Municipality was held sometimes in the year 1964. In accordance with the provisions of the Municipal Act, the elected Commissioners were to hold office for five years commencing from the date of the general election of the Commissioners in the Municipality, Likewise, the Chairman, Vice-Chairman and the President were to hold office for five years. Admittedly, since the last general election of the municipality in the year 1964, the municipal election was never held and it came to be superseded on 30-4-77, Even after its supersession in April 1977, no election was held and on 15-9-79 the Corporation was established and constituted.

4. The power to supersede a municipality is provided by Section 385 of the Bihar and Orissa Municipal Act, and it reads as follows : --

Section 385 --"Power to Supersede Commissioners in case of incompetency default or abuse of powers --

"If, in the opinion of the State Government, Commissioners of any Municipality are not competent to perform, or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the State government may, by an order published with the reasons for making it in the official Gazette, declare such Commissioners to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order or may, after giving notice to the Commissioner for its intention, by a like order, direct that the office of the Commissioners shall be deemed to be vacant as from a date to be specified in the order and that a fresh election shall be held on or before that date."

Section 386 deals with the consequences of supersession : --

"386. Consequences of Supersession (1) When an order of supersession has been passed under the last preceding section, the following consequences shall ensue --

(a) all the Commissioners, as from the date of the order vacate their offices as such Commissioners;

(b) all the powers and duties which may, under the provisions of this (or any other Act), be exercised and performed by the Commissioners whether at a meeting or otherwise shall during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

(2) On the expiration of the period of supersession specified in the order, unless the State Government otherwise directs, the municipality shall be re-established by election and appointment, and the persons who vacated their offices under

Clause (a) of Sub-section (1) shall not be deemed disqualified for election or appointment.

(3) When an order directing that the offices of the Commissioners shall be deemed to be vacant and that a fresh election shall be held has been passed under the last preceding

section --

(a) all the Commissioners then holding office shall notwithstanding anything contained in Section 29, vacate their offices as such Commissioners from the date specified in the order;

Provided that the Chairman shall vacate office at the meeting of the Commissioners, elected and appointed in pursuance of Clause (b) of this sub-section, which is held under the provisions of Sub-section (2) of Section 20;

(b) election shall be held and appointments made on or before the date specified in the said order for the purpose of filling the offices of the Commissioners which are vacated under Clause (a) of this sub-section, and the persons who vacated their offices under the said Clause (a) shall, unless the State Government otherwise directs, be eligible for re-election or re-appointment, if otherwise qualified."

5. In terms of Section 385 of the Municipal Act, the State Government was required to state the reasons for supersession in the order to be published in the official gazette. It could supersede the Commissioners for a definite period to be specified in the order. In the alternative, by a like order, after expressing its intention in the notice to be given to the Commissioners it could direct that the office of the Commissioner shall be deemed to be vacant from a specific date mentioned in the order and, further that a fresh election shall be held on or before that date.

6. In accordance with Section 386 of the Municipal Act, as soon as an order of supersession is passed by the government, u/s 385, all the Commissioners from the date of the order are required to vacate their offices and during the period of supersession all the powers and duties to be exercised and performed by the Commissioners shall be exercised and performed by such persons or person as the State Government may direct and during this period of supersession all properties vested in such Commissioners shall vest in the Government.

Sub-section (2) of the Section 386 of the Municipal Act is imperative and it says that unless the State Government otherwise directs, the municipality shall be re-established by election and appointment on the expiration of the period of supersession specified in the order.

7. Rule 7 of the Bihar Municipal Elections and Election Petitions Rules, 1953 provides;

"Notification for election for Commissioners

(1) For the purpose of constituting the municipality or re-constituting it on the expiration of the term of office of the Commissioners or u/s 386, the District Magistrate shall, by a notification published in the official gazette and in the manner laid down in Section 356, call upon all the wards of the municipality to elect Commissioners in accordance with the provisions of the Act and these rules, before such date as may be specified in the notification;

Provided that in the case of a general election held on the eve of the expiration of the term of the Commissioners, a notification under this rule shall not be issued more than four months prior to the date on which the term of the Commissioners is due to expire under the provisions of the Act.

2. The District Magistrate, may, by a like notification alter the date fixed under Sub-rule (1) for reasons to be recorded in the notification.

3. The alteration of the date under Sub-rule (2) shall not affect any action taken under the Act and these rules, before the date of issue of the notification under the said sub-rule except when the State Government for reasons to be recorded in writing otherwise directs."

8. After supersession of the Ranchi Municipality in April 1977, the intention to hold election was not declared. The Municipality was not re-established by election and appointment. The Government order, if any, published in the official gazette was neither produced nor such averment was made in the counter affidavit filed by three persons at different stages even after obtaining adjournments in the case. One is left to guess whether the State Govt. at all desired to hold a fresh election on a date specified in the official gazette. The publication of the notification is the very foundation of the election and the non-compliance results into depriving the electors of their right to exercise franchise. Since the year 1964, when the last election of the Municipality was held, there was no further election and it was ultimately superseded in 1977. The long silence did not end here. Even after supersession in 1977, the election was not held and the Ranchi Municipal Corporation was established and constituted on 15-9-79. Reasons were not disclosed to the public and not even to the Court at the hearing.

9. The inaction of the authorities continued in not holding the election even after the establishment and constitution of the Ranchi Municipal Corporation on 15-9-79. In accordance with the transitory provisions contained in Section 545(i) of the Patna Municipal Corporation Act, 1951, Sri H.R. Gupta Special Officer, Ranchi Municipality, was appointed by the State Govt. as an Administrator of the Ranchi Municipal Corporation with effect from 15-9-79 until further orders, to exercise, perform or discharge the powers, duties and functions which are conferred or imposed by or under the said Act on the Municipal Corporation.

10. The Patna Municipal Corporation Act, 1951 has been made applicable to the Ranchi Municipal Corporation. In order to properly appreciate the question involved, a few relevant provisions of the Patna Municipal Corporation Act are

necessary to be noticed. Section 8 of the Patna Municipal Corporation Act, deals with the constitution of the Corporation. Section 9 deals with the preparation of electoral rolls for the wards and special constituencies and for the exercise of votes by persons holding qualifications in more than one ward or special constituency.

Section 15 deals with the Notification of election and provides "every election, selection or appointment of a councillor and every election of the Mayor or Deputy Mayor, shall be notified in the prescribed manner and such persons shall enter on their respective offices from the date of such notification."

Section 16 prescribes the term of office of councillors and reads as follows : --

"Subject to the provisions of this Act, all councillors of the corporation constituted as aforesaid, shall retire from office four years, after they have entered upon office and the said four years shall be deemed to include any further period which may elapse between the expiration of the said four years and the date of the first meeting of the next succeeding municipal Corporation at which a quorum is present."

11. Section 530 of the Corporation Act deals with the power of the State Government to supersede the Corporation;

"530. Power of State Government to supersede the Corporation:(1) If at any time upon representations made or otherwise, it appears to the State Government that the Corporation is not competent to perform or persistently makes default in the performance of, the duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses its powers, the State Government may, after having given an opportunity to the Corporation to show cause why such an order should not be made, or, if it appears to the State Government that the case is one of emergency, forthwith issue an order directing that all the councillors shall retire from office as and from such date as may be appointed and declare the Corporation to be superseded. Such order shall be published in the official gazette and the reasons for making it shall be stated therein.

(2) Notwithstanding anything contained in this Act all councillors shall vacate their office from the date mentioned in any order under Sub-section (1)."

Section 531 deals with the consequences of supersession and Section 532 is the power of the State Government to reconstitute the Corporation.

12. Section 540 is the power of the State Government to make rules and such rules may provide for all or any of the following matters, namely;

2(f) "the date and time of elections, the mode of recording votes, the management of contested elections and the procedure in the case of equality of votes or in the event of one councillors being elected to represent more than one ward or interest."

13. Section 545 is the Transitory provision,

"545. Transitory provisions : (1) The State Govt. may by notification, appoint for such period not exceeding six months from the date of the commencement of this Act as may be specified in the notification, a person to be called the Administrator to exercise, perform or discharge the powers, duties and functions which are conferred or imposed by or under this Act on the Corporation, the Standing Committee and the Chief Executive Officer, and the Administrator shall be deemed to be the Corporation for all or any of the purposes of this Act;

Provided that the period of appointment of the Administrator specified in the notification under this Sub-section may be extended by the State Government by a like notification for a period not exceeding three months at a time but in any case not exceeding thirty months in all for reasons to be specified in the notification.

(2) The Administrator or any other officer or officers appointed, by rules made u/s 540 or otherwise, by the State Government in this behalf shall prepare a register of electors and shall hold an election of Councillors in accordance with the provisions of this Act in the Rule made thereunder.

(3) The Administrator shall cease to hold office on the day the notification u/s 15 is published in the official gazette and shall from that date be deemed to be the Chief Executive Officer until a Chief Executive Officer is appointed u/s 50.

(4) All municipal officers and servants in the employment of the Administrator at the commencement of this Act shall be officers and servants employed by the Corporation under this Act as if they had been appointed under Sections 54, 55 and 56.

(5) Notwithstanding anything contained in this Act or any rule or bye-law made thereunder, the conditions of service, pay and allowance, existing in respect of all permanent officers and servants of Patna City Municipality and the Patna Administration Committee on the day immediately before the commencement of this Act shall be deemed to be their existing conditions of service, pay and allowance under this Act on the day this Act comes into force.

14. Patna Municipal Corporation, Preparation of Electoral Rolls and Conduct of Election Rules, 1953 was made applicable to the Ranchi Municipal Corporation vide notification No. 293, dt. 20th Feb. 1982 with the only amendment that wherever the words "Patna" and "District Magistrate Patna" occur in this Patna Corporation Rules, 1953, it will be read as "Ranchi" and "Deputy Commissioner Ranchi" respectively --

Rule 2(n) defines;

"Returning officer" means the District Magistrate Patna and includes any person for the time being exercising the powers of the District Magistrate Patna.

Rule 3 provides that there shall be an electoral roll for every ward of the

corporation. Rule 10 deals with the publication of draft electoral roll and provides that the draft electoral roll for every ward shall be published by the Registration Officer by affixing for public inspection, a complete copy of the roll of various places mentioned therein. After considering the objections etc., the final publication of the electoral roll shall be made in accordance with Rule 26.

15. Rule 29 deals with the procedure for conducting elections and provides as follows : --

"29. Public notice of intended election:(1) For the purpose of constituting the Corporation, or reconstituting it, on the expiration of the term of office of the Councillors u/s 16 or Section 532, the Returning Officer, shall by a notification published in the official gazette and in the manner laid down in Section 542, call upon all the wards of the corporation to elect councillors in accordance with the provisions of the Act and these rules before such date as may be specified in the notification;

Provided that in the case of general elections held on the eve of the expiration of the term of the councillors, a notification under this Rule shall not be issued more than four months prior to the date on which the term of office of the Councillors is due to expire under the provisions of the Act.

(2) The Returning Officer may, by like notification, alter the date fixed under Sub-rule (1) for reasons to be, recorded in the notification.

(3) The alteration of the date under Sub-rule (2) shall not affect any action taken under the Act and these rules before the date of issue of the notification under the said sub-rule."

16. It is relevant to notice that the Ranchi Municipal Corporation (Division of Ranchi into Wards) Rules 1981 came into force w.e.f. 4-4-81 and in accordance with the provisions of Rule 2, Ranchi was required to be divided into thirty-seven territorial wards for the purposes of the preparation of electoral rolls for the wards and conducting elections of the councillors from such wards. One councillor shall be allocated to every such ward. The thirty-seven wards and the boundaries thereof shall be such as are specified in the schedule.

17. Ignoring the various provisions of the Act and the Rules enumerated above could it be said that the authorities concerned were justified in not holding the election either of the Municipality or the Corporation? What were the reasons to defer it for long continuous years? Could the right of the people to exercise their franchise of electing Municipal Commissioners from different wards be suspended and kept in abeyance by indirect method in allowing a single individual named as Administrator to continue beyond the period prescribed u/s 545 of the Patna Municipal Corporation Act, 1951, which is a Transitory provision?

18. Has the breach of duty and active neglect been explained in the counter affidavit? in paras 5 to 7 of the counter affidavit sworn by an assistant of the department of Urban Development it is stated that;

"due to many problems the election could not be held till date and all the functions are being done by the Administrator, Ranchi Municipal Corporation, Ranchi. In the year 1984, the Deputy Commissioner, Ranchi proposed for the Municipal Election and accordingly programme electoral roll for election was sent to the Minister concerned for approval but unfortunately it was stayed/dropped for the time being only for the general election. The file has been moved for obtaining the order for holding the election and as soon as we receive the order, the election will be held."

This affidavit was filed on 2-1-85 after the case was adjourned giving a chance to explain as to why the election was not held for such a long time.

19. When the hearing of the case was taken up on 14-1-85, finding that the counter affidavit sworn and filed by an assistant on 2-1-85 was unsatisfactory, the State counsel sought adjournment in order to file a better affidavit stating full facts as also the reasons as to why the municipal and the Corporation elections were withheld for long years. Time was granted till 18-1-85 and the hearing was adjourned to 21-1-85. The counter affidavit was not filed and having received no instruction, the State Counsel requested for some more time. This was also granted in order to enable the Secretary-cum-Commissioner, Urban Development (respondent No. 3 herein) to file the same by 25-1-85 and the hearing was adjourned to 28-1-85, on this date the standing counsel appeared and informed the Court that the counter affidavit will be sworn in at Patna and sent here and a copy of it will be served on the petitioner by 2-2-85. In this view, the hearing was adjourned to 4-2-85. The counter affidavit sworn by the Secretary-cum-Commissioner of the Urban Development was filed on 31-1-85.

In paras 5 and 6 it was stated that;

"due to various factors, such as, Constitution of Wards, framing of Election Rules, i.e. Patna Municipal Corporation Election Petition Rule, Patna Municipal Corporation Preparation of Electoral Roll and Conduct of Election Rules, Patna Municipal Corporation, Special Constituency Rules, etc. and coming up of the recent Lok Sabha Election and so many other problems, the election could not be held till date and all the functions are being discharged by the Administrator, Ranchi Municipal Corporation. The election of the Ranchi Municipal Corporation will be held soon after the Vidhan Sabha Election, which is due to be held on the 2nd and 5th Mar. 1985. Now election process has been completed and the file has been moved for obtaining the orders of the Government for holding the said election. As soon as we receive the order, the election of the Ranchi Corporation will be held. It has been further stated that the election programmed for holding the election of the Corporation will be notified within three months of the declaration of the Assembly election results."

20. During the course of hearing a supplementary counter affidavit sworn by the Joint Secretary, Urban Development, was also filed on 9-2-85. In paras 3 and 4 it was stated that;

"the Commissioner Sri Bhasker Banerjee Urban Development Department joined this department about two years ago and this deponent joined this department in the month of Nov. 1983. From the note received from the Administrator, Ranchi Municipal Corporation, Ranchi who joined this office on 2-8-83, it is learnt that the election of Ranchi Municipality was held in the year 1964 and the elected body continued up to the year 1977, when the Ranchi Municipality was superseded on 30-4-77, vide Govt. letter No. 1-101/77-2709 Urban Development and Housing Department dt. 30-4-77. There was a proposal for abolishing the Municipality and constituting Municipal Corporation at Ranchi."

21. In paras 6 to 10 of the third counter affidavit a reference was made to a writ petition, C.W.J.C. No. 3302/79, filed in the High Court at Patna. Two writ petitions, namely, C.W.J.C. Nos. 802 and 805 of 1980 (R) filed in the Ranchi Bench of the Patna High Court by the Ranchi and Doranda Rate Payers Association & Ors were also mentioned. By referring these writ petitions an attempt was made to show as if the election had been deferred on account of certain orders passed by this Court. In other words an alibi was taken to explain the default in holding the election. It was not stated whether the holding of the election was the subject matter of those writ petitions. Without furnishing the detail as to the nature of the dispute involved in those writ petitions and the nature of the orders passed by the Courts, this Court was asked to trace out the records and inform itself as to the nature of the dispute and the orders passed by the Courts. With the assistance of the counsel appearing on behalf of the petitioner, it was found that the question of holding of election was not the subject matter in those writ petitions. In writ petition No. 3302/79, the question was the establishment of the Ranchi Municipal Corporation, because certain areas had been wrongly included. The writ petition had been dismissed by the High Court on 14-10-80. A SLP was filed before the Supreme Court and an interim order of stay was granted on 14-11-80. After hearing the parties including the Administrator of the Corporation, Special Leave was granted on 2-12-80 and the interim order, of stay was vacated. On 8-12-80 two other writ petitions had been filed in the Ranchi Bench of the Patna High Court by the Ranchi and Doranda Rate Payers Association and others and the same subject matter as involved in C.W.J.C. No. 3302/79 was also involved here. On 10-12-80, status quo was granted by the High Court. On transfer petition filed by respondents in the Supreme Court, these two writ petitions were transferred to the Supreme Court to be heard along with S.I.P. No. 1/81 and the status quo granted by the High Court was stayed.

Thus there was no order putting any impediment in the way of the Corporation to hold election in accordance with the Act and the Rules.

22. Various provisions of the Municipal Act, Corporation Act and the Rules made therein, cast a mandate. And yet the municipality was oblivious, to those obligations towards human well-being and was directly guilty of breach of duty and active neglect. The statutory setting being thus plain, the municipality or the

Corporation cannot extricate itself from its responsibility. This casts the public duty implicit in the public power to be exercised on behalf of the public. The grievous failure of local authorities to provide the basic amenity of public conveniences has driven the public to approach this Court.

23. The transitory provisions contained u/s 545 of the Patna Municipal Corporation Act is clear and unambiguous that an Administrator could be appointed by a notification issued by the State Government for a period not exceeding six months from the date of the commencement of the Act, as may be specified in the notification. He shall be deemed to be the Corporation for all or any of the purposes of this Act. The period could be extended by the State Government by a like notification for a period not exceeding three months, at a time, and in any case, not exceeding 30 months in all for the reasons to be specified in the notification.

24. Under Sub-section 2 of Section 545, an obligation is cast on the Administrator or any other officer or officers appointed by the Rules, to prepare a register of electors. A further duty is cast, that he shall hold the election of councillors in accordance with the Act and the Rules. Once the official gazette is published u/s 15 of the Act, notifying the date of the notification for election, the Administrator shall cease to hold the office and with effect from that date he shall be deemed to be the Chief Executive Officer until another Chief Executive Officer is appointed u/s 15.

25. The statement of the Secretary-cum-Commissioner, Urban Development, in para 5 of the counter affidavit is vague and misleading. The various factors for not holding the election till date were stated to be the framing of (a) Patna Municipal Corporation, Election Petition Rules (b) Patna Municipal Corporation Preparation of Electoral Rolls and Conduct of Elections Rules and (c) Patna Municipal Corporation Election (Special Constituencies) Rules.

Were these Rules not in existence in the year 1979 when Ranchi Municipal Corporation was established and constituted? Before making this careless and misleading statement, it ought to have been seen that all these Rules had come into force in the year 1953. It is not understood how this could be a factor for not holding the election in the year 1979.

The other factor stated was the coming up of the recent Lok Sabha election and so many other problems. How the recent Lok Sabha election could be a factor to withhold the election of the Corporation which was due since 1979.

The last factor is stated to be "so many other problems". This is vague, misleading and careless statement coming from a responsible officer, the Secretary-cum-Commissioner of the Department of Urban Development.

The contentment in postponing the election and withholding it for indefinite period is to be elicited from the last line of para 5 stating, that "all the functions are being discharged by the Administrator Ranchi Municipal Corporation

(respondent 6 herein).

26. As discussed earlier, in the supplementary counter affidavit sworn and filed by the Joint Secretary, alibi was taken in the name of certain pending writ petitions which had no nexus or relationship with the election of the Ranchi Municipal Corporation.

In the counter affidavit sworn and filed by the Secretary-cum-Commissioner, factors for not holding the election were wholly irrelevant and extraneous.

27. Another statement made by the Administrator of the Ranchi Municipal Corporation in his counter affidavit dt. 9-2-85 is interesting. He was appointed Administrator by Govt. Notification dt. 25-7-83 u/s 545 of the Corporation Act and continued. According to him 37 wards were formed in accordance with Ranchi Municipal Corporation (Division of Ranchi) Rules 1981 and it was published on 3-4-81 but the affidavit does not disclose the reasons why the electoral roll in respect of these 37 wards was prepared and published after 3 years on 5-5-84. It is further stated that the election of the Councillors from these 37 wards was in process and tentatively it was scheduled to be held sometime in June 1984, but a Teleprinter message from the State Govt. was received stating that "Govt. desire, the election of Ranchi Municipal Corporation be postponed until further orders". Why the Government abruptly postponed it and what was the reason behind it has not been disclosed in either of the three counter affidavits filed on behalf of the State starting with an assistant, then by the Secretary-cum-Commissioner and ending with the Joint Secretary of the Urban Development.

28. The fact remains that in derogation of the terms of Section 545 of the Corporation Act, four Administrators were allowed to continue from 15-9-79 when Corporation was constituted and 25-7-83 when the present Administrator was appointed. An argument advanced by the learned counsel for the Corporation was that each appointment of a person to be called Administrator is a separate appointment. True, but the appointment of an Administrator under the Transitory provisions contained in Section 545 of the Patna Municipal Corporation Act by a Government Notification, could not be for a period exceeding six months from the commencement of the Act as may be specified in the notification. The period specified in the notification could be extended by the

State Govt. for a period not exceeding three months at a time and in any case not exceeding 30 months in all. For such extension of the period, reasons are to be specified in the notification itself.

29. In order to justify the extension of the period for the continuance of the Administrator beyond the terms specified in Section 345 of the Act, the notification if any, issued by the Govt. stating reasons was not produced. There is no averment in the counter affidavit whether such notifications were at all issued by the Govt. extending the period in terms of Section 545. It cannot be accepted that the notification appointing the administrator for six months was itself a

license or lease for such continuance in the office, for any period of time. The very purpose behind the Transitory provision contained in Section 545 of the Act would then be defeated. Could it be held that the election of the Corporation would not be required at all because a person appointed as Administrator u/s 545 is deemed to be a Corporation for any of the purposes of the Act? Since reasons are required to be stated for extension of the period u/s 545 of the Act, therefore, notification was perhaps not issued.

In the circumstances, the continuance of the present Administrator contrary to the provisions of Section 545 of the Patna Municipal Corporation Act must be held to be illegal and without any authority of law,

30. The public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the community and to assure them social and economic justice which is a signature due of our constitution, In the present case, the public of Ranchi have been denied and deprived of their right of franchise in electing the Councillors from their respective Wards. They are anxious that the election in the Corporation be held in accordance with law without postponing it any more for an indefinite period. Without faithfully implementing the Directive Principles, it is not possible to achieve a Welfare State, contemplated by the Constitution.

31. Social justice is due to the people.

Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. In a matter of this nature, what is involved is not merely the right of a private individual, but the civic right, the right to exercise franchise, the health, safety and convenience of the public at large. Where Directive Principles have found statutory expression in Do's and Dont's the Court will not sit idle and allow municipal government to become a statutory mockery.

32. In view of the statement now made in the counter-affidavit filed on behalf of the State, I direct that the election programme would be notified within three months of the declaration of the present Assembly Election result and the election of the Ranchi Municipal Corporation shall be held in accordance with law.

33. The writ petition is accordingly allowed. So far as the cost of the writ petition is concerned, since the petitioner has come up before this Court for the purpose of vindicating the right of the public, I direct the State of Bihar to pay to the petitioner a sum of Rs. 2000/- by way of cost. At the request of the Secretary, Free Legal Aid Clinic Ranchi, let a copy of this judgment be given free of cost.