
(1995) 09 PAT CK 0042
In the Patna High Court
Case No : C.W.J.C. No. 4283 of 1995

Satish Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-1995

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 1, 29, 29(1), 385, 390B
Bihar Municipal (Amendment) Act, 1994 — Section 14, 2, 28

Citation : (1995) 2 PLJR 719

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aftab Alam, J.—The Petitioner, in this application, challenges a notification, dated June 23, 1995, issued in the name of the Governor of Bihar whereby and where under the Aurangabad municipality was dissolved in purported exercise of power u/s 22 of the Bihar Municipal (Amendment) Act, 1994, on the ground that the Commissioners had completed their five years" term in office. A true copy of the impugned notification is at Annexure-1. It is not in dispute that no notice was given to the municipality before issuing the notification of its dissolution.

2. It may be noted at the outset that the provision of law referred in the notification and the ground assigned for dissolving the municipality do not harmonies. Section 22 of the Amendment Act, amended Section 385 of the Bihar, and Orissa Municipal Act which empowered the State Government to dissolve a municipality if in its opinion the municipality exceeded or abused its powers or was not competent to perform its duties etc. A municipality could be dissolved for the reasons stated in Section 385 of the Bihar and Orissa Municipal Act as amended by Section 22 of the Amendment Act even before the Municipal Commissioners had completed their five years" term. On the other hand, a municipality could be dissolved on the completion of the term of Municipal Commissioners in terms of Section 29 of the Bihar and Orissa Municipal Act as

amended by Section 14 of the Amendment Act. A dissolution u/s 385 of the Act, however, would require a reasonable opportunity of hearing to the municipality before it was dissolved.

3. Coming to the facts of this case, it is not in dispute that the municipality was constituted on 28.05.89. It, thus, completed its term of five years on 27.05.94. On that date, by virtue of the unamended provision of Section 29 of the Bihar and Orissa Municipal Act, the Commissioners were to hold office for a further period of six months from the date of the expiry of their terms. The relevant provision was the proviso to Sub-section (2) of Section 29 of the Bihar and Orissa Municipal Act which prior to the amendment of Section 29 was as follows:

Provided that the Commissioners, Chairman, Vice Chairman and President, if any shall cease to hold office after six months from the date of expiry of their terms unless extended by the State Government for a further period, not exceeding six months, and thereafter the State Government shall make such arrangement for the administration of the municipality till the first meeting of the newly elected and co-opted Commissioners as it deems fit and proper.

4. From the above it is apparent that the Commissioners of this municipality were entitled to hold office lawfully and quite validly till 27.11.94, that is to say, for a further period of six months from the date of completion of their five years' term on 27.05.94, however, on May 30, 1994, itself the ordinance amending the Bihar and Orissa Municipal Act came into force which were later made into an Act. This amendment Ordinance/Act brought about large scale amendments in the Bihar and Orissa Municipal Act. Section 14 of the Amendment Act substituted the following for Section 29 of the Bihar and Orissa Municipal, Act:

29. Duration of Municipality.- (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for a term of 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.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality which is functioning immediately before such amendment till the expiration of its duration specified in Sub-section (1):

(3) An election to constitute a Municipality shall be completed:

(a) before the expiry of its duration specified in Sub-section (1);

(b) in case of dissolution before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this Sub-section for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of the Municipality before the expiration of its duration shall continue only for the remainder of the period for which dissolved Municipality would have continued under Sub-section (1) had it not been dissolved.

Section 22 of the Amendment Act amended Section 385 of the Bihar and Orissa Municipal Act. The amended Section 385, to my mind, is not quite relevant for this case, but, this also may be noted as it has been referred to in the impugned notification:

385. Dissolution of Municipality- If, in the opinion of the State Government, a Municipality exceeds or abuses its powers, is not competent to perform or makes persistent default in the performance of the duties imposed on it under this Act, or any other law for the time being in force, the State Government may by order, published in the official Gazette, and subject to the provisions of Section 29 dissolve such Municipality.

5. From the provisions of Sub-section (1) of Section 29, quoted above, it is manifest that the life of the municipality under the Amended Act must come to an end after five years from the date appointed for its first meeting. It is also to be noted that in the amended Act no scope has been left for any extension of the life of the municipality by issuance of any notification by the Government.

6. However, in my opinion, what would save the present municipality from dissolution is the saving clause contained in Section 28 of the Amendment Act by which two new Sections 390B and 390C were inserted in the Bihar and Orissa Municipal Act. The second proviso to Section 390C is as follows:

Provided further, notwithstanding the provisions of this ordinance, the municipality and the notified area committee which were validly constituted under the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act 7, 1922) shall continue to function till the constitution and the first meeting of the municipality.

7. As is shown above, on May 30, 1994, when the ordinance came into force the Aurangabad Municipality was quite validly constituted as it was still within the six months period from the date of expiry of the term of the Commissioners. Hence, by virtue of the saving clause as contained in the second proviso to Section 390C(1) it shall continue to function till the constitution and the first meeting of the "municipality", that is to say, a municipality elected and constituted in terms of the Amendment Act (See Section 2 of the Amendment Act introducing amendments in Section 1 of the Bihar and Orissa Municipal Act). It is, thus, apparent that the municipality could not be dissolved on the ground of completion of the five years' term of its Commissioners as provided under the amended Section 29 of the Act nor could it be dissolved under the amended Section 385 of the Act without giving an opportunity of hearing to it.

8. I am, therefore, clearly of the view that the impugned notification dissolving

the municipality is wholly without jurisdiction and authority. It is, accordingly, quashed.

9. In the result, this writ petition is allowed, however, without any costs.