

(2018) 05 PAT CK 0099

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18671 Of 2017, 5707 Of 2018

Shailesh Kumar Singh And Ors

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 01-05-2018

Acts Referred:

Bihar Municipal Act, 2007 — Section 478
Bihar Municipal Election Rules, 2007 — Rule 29, 29(1)
Bihar Municipalities Territorial Constituencies (Ward) Constitution Rules, 2001 — Rule 3(2), 5
Constitution Of India, 1950 — Article 226, 243(Z), 243(Z)(G), 243(Z)(G)(b)

Citation : (2018) 3 PLJR 117

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : S.B. K. Mangalam, Anita Kumari, Kinkar Kumar, Amit Shirvastava, Sanjeev Nikesh, Y.P. Sinha, Girish Pandey

Final Decision : Dismissed

Judgement

1. In these two writ petitions since a common question of law is involved, they have been heard together and are being disposed of by a common order.

2. In CWJC No.18671 of 2017, the petitioner has prayed for quashing the constitution of wards in Form-6 under Rule-29(1) of the Bihar Municipal

Election Rules, 2007 (for short "Rules of 2007") and published under the authority of respondent no.5 on 20.11.2017 under his memo no.1286

dated 20.11.2017 whereby and whereunder for the purposes of holding election in newly constituted Mahnar Nagar Parishad, the total area of the said

Municipality has been divided in 27 wards on the ground that the said constitution of wards has not been notified in tune with the direction issued by

the State Election Commission (for short "commission") vide its letter no.3826 dated 01.09.2017.

3. In CWJC No.5707 of 2018, the petitioners have prayed for quashing the Constitution of Ward constituted for holding Municipal Election, 2018 for

newly upgraded Banka Nagar Parishad which has been published in Banka District Gazette (Extraordinary part) No.151 dated 21.02.2018 on the

ground that the said wards have been constituted and published in the aforesaid District Gazette in violation of the provisions contained under Rule-

3(2) read with Rule 5 of the Bihar Municipalities Territorial Constituencies (Ward) Constitution Rules, 2001 (for short "Rules of 2001") as also the

provisions contained under Rule 29 of the Rules, 2007 and the instructions issued by the commission vide its letter No.4367 dated 14.11.2017.

4. Mr. S.B.K. Managlam, learned counsel appearing for the respective petitioners in these two cases submitted that the constitution of wards in

Mahnar and Banka Nagar Parishads have not been notified in tune with the directions issued by the commission. He submitted that if the constitution

of the wards has to be done in the manner to avoid any confusion in the demarcation of wards, the constitution of wards of Mahnar and Banka Nagar

Parishads cannot be sustained in the eye of law on the ground that in respect of many of wards, the boundary is so vague that it cannot be identified

by the visible means. He submitted that under the statutory provisions of the relevant Act and the Rules, though draft list in Form-6 was published and

objections were invited and the petitioners in the respective cases filed their respective objections to the draft list, without consideration of the

respective objections, final lists were published. He submitted that the instructions issued by the commission categorically provides that every territorial

constituencies shall have a definite geographical boundary divided by the natural and artificial things, but a perusal of the list of wards finally published

by the respondents would categorically show that the instructions issued by the commission were not followed.

5. Mr. Amit Shrivastava, learned counsel appearing for the commission has opposed the writ petitions. He submitted that the writ petition is not

maintainable on the ground of bar contained under Article 243 ZG of the Constitution of India read with Section 478 of the Bihar Municipal Act, 2007

(for short "Act of 2007"). He submitted that the election to the Mahnar and Banka Nagar Parishads has already been notified and the election

schedule has also been published according to which, the date of nomination was 09.04.2018 and 17.04.2018 and the date of election is 08.05.2018.

He contended that once the election process has commenced, indulgence into the matter in a writ petition under Article 226 of the Constitution of

India is not permissible. In support of his submission, he has placed reliance on the judgment of the Supreme Court in Anugrah Narain Singh and

Another vs. State of U.P. and Others [(1996) 6 SCC 303] and a Division Bench judgment of this Court in Raju Prasad Mehta vs. State of Bihar

through the Chief Secretary and Ors. [(2017) 2 PLJR 970].

6. Mr. Kinkar Kumar, learned counsel for the State in CWJC No.18671 of 2017 and Mr. Y.P. Sinha, learned AAG-7 for the State in CWJC No.5707

of 2018 have submitted that after the draft publication of Form-6 containing the lists of constitution of wards of Mahnar and Banka Nagar Parishads

objections were invited and after considering the respective objections, Form-6 was sent to the commission for final publication. They submitted that

the contention of the petitioners is not true and the objections were considered in presence of the parties.

7. In reply, learned counsel for the petitioners submitted that since the writ petitions were filed prior to the commencement of the election process, the

objection raised regarding maintainability of the writ petitions is not sustainable.

8. I have heard learned counsel for the parties and perused the record.

9. It is not in dispute that the election to the Nagar Parishads of Mahnar and Banka has already been notified and the schedule for election has also

been published.

10. The relevant provision of the Constitution of India is Article 243ZG being reproduced as under:-

â??243ZG. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,-

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made

under Article 243 ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is

provided for by or under any law made by the Legislature of a Stateâ??.

11. From perusal of the above Article 243ZG, it would be manifest that the bar in considering any matter relating to Municipal Act or any ground whatsoever after publication of notification for holding municipal election is two-fold. Clause (a) of Article 243ZG mandates that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 ZA shall not be called in question in any Court. Further, clause (b) of Article 243ZG mandates that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the Legislature of a State.

12. Similarly, section 478 of the Act of 2007 which is also prohibitory in nature reads as under:-

478. Bar to interference by Courts in electoral matters.- Notwithstanding anything contained in this Act-

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made

under Article 243 ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to the prescribed authority under this Act.

13. Thus, in terms of Section 478 of the Act of 2007, there is complete bar in considering any matter relating to municipal election or any ground

whatsoever after the publication of the notification for holding election except by an election petition under the Act.

14. In Anugrah Narain Singh (supra) on which reliance has been placed by the learned counsel for the commission, the Supreme Court held as under:-

The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA

cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now

that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election

will ever take place because someone or the other will always find some excuse to move the court and stall the elections.

15. In Raju Prasad Mehta (supra), a notification issued the State Election

Commission whereby certain processes had been initiated for reservation of seats in various wards for scheduled castes and scheduled tribes, backward class female candidates, etc., was called in question by filing a writ petition in the nature of public interest litigation. In that case, a Division Bench of this Court after hearing the parties, vide order dated 26.04.2017 held as under:-

“The general election to the public bodies in the local authorities in the State of Bihar has been notified by the Election commission for the year 2017 and the election process has already commenced and, therefore, at this stage when the reelection process has already commenced, indulgence into the matter in a writ petition under Article 226 of the Constitution is not permissible. The petitioner has to challenge the reservation and allocation of seats after the elections are over by resorting to the remedy of election petition available under the statute.

At this stage, we are not inclined to interfere into the matter because the process of election is over and the notification issued by His Excellency the Governor of State of Bihar on 19.04.2017 and in view of the law laid down by the Supreme Court in the case of Harnek Singh vs. Charanjit Singh (2005) 8 SCC 383.”
(emphasis mine)

16. In view of the above binding precedents of the Supreme Court and the Division Bench of this Court, since the election processes of Mahnar and Banka Nagar Parishads has already commenced and the election schedule for election has already been notified, I am not inclined to interfere into the matter in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petitions are dismissed.

17. If so advised, the petitioners may seek their remedy by resorting to remedy of election petition after the results of the election are declared.