

(2000) 04 PAT CK 0070

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2472 of 1998 (R)

Shyam Sunder Ram

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 29, 385, 390C
Constitution of India, 1950 — Article 243U, 243ZF

Citation : AIR 2001 Patna 7 : (2000) 48 BLJR 1410 : (2000) 3 PLJR 82

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

Bench : Division Bench

Advocate : Anil Kumar Sinha, for the Appellant; Debi Prasad Satish Kumar Ughal and R.K. Merathia, G.P. II, for the Respondent

Judgement

1. In this writ petition a prayer has been made for of an appropriate writ in the nature of certiorari for quashing the notification of the State Government, Department of Urban development, dated 25-3-1998, as contained in Annexure 5 whereby the old elected body of Giridih Municipality in the year 1989 was allowed to function and the previous decision dated 23-6-1995 regarding dissolution of the municipal Board was cancelled.

2. The facts of the case are not in dispute. The general election of Giridih Municipality as per the provisions of the unamended Act, 1922 was conducted on 22-1-1989 and the election of the Chairman thereof was held on 15-5-1989 in the first general meeting of the Board of the Municipality. Admittedly the term of five years of the elected body was complete on 30-5-1994 and the grace period of six months as provided under the old Act had also expired on 30-11-1994. Therefore, the State Government in exercise of its power conferred under S. 29 of the unamended Act, by the notification dated 23-6-1995 dissolved the Municipal Board and by another notification dated 30-6-1995 appointed Special Officer to carry out business of the Municipality until afresh election In terms of the amended Municipal laws. The notification regarding appointment of Special

Officer was later superseded by another notification dated 19-9-1996 whereby Sri Jai Mangal Singh was appointed as a Special Officer. Copies of the abovementioned notifications are Annexures 1, 2 and 3 to the writ petition.

3. Later, the notification dated 23-6-1995 regarding dissolution of the Municipal board was challenged by one Raj Kishore Ram before this Court vide C.W.J.C. No. 2389 of 1996 (R). It was alleged although the Municipal Board had completed the term of five years as on 30-5-1994, but by virtue of the impugned dissolution of the Board, the elected members were not allowed to avail the grace period of six months from the date of its expiry and, therefore, the alleged dissolution was arbitrary and wholly without jurisdiction. Apart from the aforesaid a reference was also made to a decision of this Court in the case of Satish Kumar Singh Vs. The State of Bihar and Others, that before dissolution of a Municipal Board as would appear from Section 385 of the amended Act they were entitled for an opportunity of hearing before recording any order for dissolution. Hence the impugned dissolution without extending any opportunity of hearing to the member of the dissolved Board was illegal and arbitrary. The Court taking into consideration the above circumstances by the order dated 13-8-1997 quashed the notification. The respondent State thus has come forward with the impugned notification dated 25-3-1998 whereby the dissolved Municipal Board was again revived.

4. Before coming to the rival contentions of the parties, it would be proper to notice that from the materials on record as well as the counter affidavits filed on behalf of the State including that of the Special Officer of the Municipality, admittedly the election of Giridih Municipality was conducted on 31-5-1989 and the term of five years had expired on 30-5-1994. This has also been brought on record that the Municipal Board had also availed the grace period of six months which in fact expired on 30-11-1994. The notification, whereby the State Government had dissolved the Municipal Board, was issued 011 23-6-1995. But as would appear from the order passed in CWJC No. 2389 of 1996 R an impression was given to the Court that the Municipal Board was not allowed to avail the grace period of six months and, therefore, the impugned order of dissolution was arbitrary and without jurisdiction. In fact, from the facts narrated above, it would appear that much before the Government's decision regarding dissolution of the Municipal Board, dated 23-6-1995 the Municipal board had already availed and completed the grace period of six months as on 30-11-1994.

5. In the background of the facts noticed above, in my view, the member of the Municipal Board were not entitled for any notice as required under S. 385 of the unamended Act, 1922. Because, opportunity of hearing was required provided a decision for dissolution was contemplated before expiry of the term of the Municipality. Therefore, in my view, the ratio of the case reported in Satish Kumar Singh Vs. The State of Bihar and Others, is not applicable to the facts of the present case.

6. Apart from what has been discussed above, it would be apt to notice that with

effect from 1st June, 1993, the 74th constitutional amendment came into effect and the provisions relating to constitution of Municipalities in UK: States were incorporated in Part IX A of the constitution. In terms of Articles 243Q and 243ZF of the constitutional amendment, the State Government was required to amend its respective laws in the tune with the constitutional amendment within a period of one year. The State of Bihar also having regard to the command of the amended provisions of the Constitution, amended the Bihar & Orissa Municipal Act, 1922.

7. It would appear from Article 243Q that every State shall constitute a Municipal council for smaller urban area a Municipal corporation for a large 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". However, the proviso contemplates that if a Municipality is to be dissolved for any reason prior to its term, reasonable opportunity is to be given before such dissolution.

8. Section 29 of the amended Act, as it now stands, is in conformity with the provisions prescribed under Article 243U of the Constitution to show that term of a municipality shall be five years and no longer.

9. Mr. Sinha, Senior counsel for the petitioner assailed the impugned notification whereby the elected body of the municipality has been given a new life as being illegal and without jurisdiction. He contended that the Municipal Board had already completed its term of five years on 31-5-1994 as also the grace period of six months on 31-11-1994. the outgoing elected body cannot be allowed to function any further. Learned counsel also referred to the amended provisions of Section 29 as well as Section 390 C which provides automatic cessation of the term of the municipality after expiry of the period of five years. In support of his submission, learned counsel also placed reliance on two decisions of this Court in the case of Bihbash Chandra Choudhary v. State of Bihar 1995 (1) PLJR 228 and Bratendra Prasad Singh v. The State of Bihar 1996 (2) PLJR 443.

10. Learned counsel for the State while drawing our attention to the submissions made in the counter affidavit submitted that the decision of the dissolution of the Municipal Board was taken on 23-6-1995 because the term of the municipality had already expired, but since the said notification was quashed by this Court, the Government had no option but to issue a fresh notification for revival of the outgoing committee.

11. The question, therefore, arises for consideration is whether the Giridih Municipality which had already completed its term of five years on 31-5-1994 as also the grace period of six months on 31-11-1994 can be allowed to continue to function by taking aid to the second proviso to Section 390C of the amended act.

12. Mr. Debi Prasad, Senior counsel appearing for the contesting respondents firstly contended that the petitioner had no locus standi to file this writ application, because even if the outgoing Municipal Board is revived, he is not to

be prejudiced in any manner. He further contended that although the provisions of this Act as they now stand, contemplate automatic cessation of the terms of the office of the elected Chairman/Commissioners but in fact the second proviso to Section 390 C provides continuance of the Municipality and Notified Area Committees, if any, on the date of commencement of the Ordinance. Therefore, by reason of this amendment, the Municipality or Notified Area committee, which had been validly constituted under the old Act shall be allowed to function till constitution and the first meeting of the Municipality. This was done with a view that there may not be any void. Reference in this regard was also made to the decisions of this Court in the cases of Bibhash Chandra Choudhary v. State of Bihar 1995 (1) PLJR 228. (supra) Bratendra Prasad Singh v. The State of Bihar 1996 (2) PLJR 443 (supra) and yet another decision in the same volume at pages 445 to the case of Nand Kishore Singh v. State of Bihar 1996 (2) Pat. L.J.R. 445.

13. In my view, as would appear from the provisions of Article 243U of the Constitution or Section 29 of the Amended Act, 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. Article 243ZF contemplates continuance of the law of municipality in existence immediately before the commencement of the Constitution 74th Amendment. From a close reading of this provision, it would appear that outer limit of one year was fixed to bring necessary amendment in any provision of law relating to municipality in force in a particular State consistent with the provisions contained for the said period. In other words, any thing inconsistent with the provisions of this part may continue to be in force until amended or repealed by a competent legislature or till expiry of one year from the date of such commitment whichever is earlier.

14. The 74th Amendment of the constitution came into force with effect from 1-6-1993 and accordingly extensive amendments were also made in the Bihar & Orissa Municipal Act, 1992 by the Ordinance/Act 1994/95 effect from 30-5-1994. As per Section 29 of the Amendment Act, which was drawn in line of Article 243 of the Constitution, the term of the elected body was fixed five years and not beyond that. The second proviso to Section 390 C was inserted under the Act with effect from 30-5-1995 by Bihar Act 2 of 1995.

15. There is no doubt as would appear from the decisions of this Court referred to above, that to obviate the void created by Section 390 C, the Second proviso was brought into effect for the continuance of the municipalities or notified committees term of which had not expired until the fresh election under the new laws. But the question whether after expiry of the outer limit of the period of one year as fixed under Article 243ZF from the date the 74th Constitutional Amendment i.e. 1-6-1993, the State legislatures had the competence to insert the second proviso to Section 390 C to allow the elected or nominated members of the Municipalities ad hoc committees to continue to function till the constitution and of the first meeting of the elected Commissioners of the

Municipalities under the amended Act were neither raised nor considered.

16. Therefore, now what will be the duration of such municipality has been specifically stipulated under Article 243U, which permits the municipalities to continue for five years from the date appointed in its first meeting. Therefore, in any view, since this municipality had already completed its terms of five years as on 31-5-1994 as also the grace period of six months on 31-11-1994, it will have no jurisdiction to continue further. That apart, as would appear from the unreported orders passed in LPA 1257 of 1997 disposed of 011 16-1-1998 and LPA 1190 of 1997 disposed of on 11-8-1998 as well as a decision of the learned Single Judge in CWJC No. 664 of 1997, by virtue of the amendment dated 1-6-1993 the provisions of Article 243U have been incorporated in the constitution as a result of which the period of duration of municipal committee or notified area committee is five years and no longer. Therefore, in view of the words "no longer" used under Article 243U, the second proviso to Section 390 does not survive.

17. In the result, therefore, taking into consideration the facts of the case from both the angles, as noticed above, I am constrained to hold that the impugned notification of the Government for revival of the outgoing body is wholly illegal and without jurisdiction. Hence the same is hereby quashed.