

(2000) 05 PAT CK 0039
In the Patna High Court
Case No : C.W.J.C. No. 1513 of 1998 (R)

Surendra Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-05-2000

Acts Referred:

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

Citation : AIR 2001 Patna 112

Hon'ble Judges : Sanat Kumar Chattopadhyaya, J; Narbadeshwar Pandey, J

Bench : Division Bench

Advocate : P.K. Sinha, R.K. Prasad and A. Trivedi, for the Appellant; M.K. Habib and R.C. Saraiwala, Government Advocate, K.S. Jaipurkar and Manoj Prasad, JCs to G.A., for the Respondent

Final Decision : Dismissed

Judgement

N. Pandey, J.—This writ petition has been filed for "an appropriate writ/order/direction, commanding the respondents to hold the election of the Municipal Commissioners of different Wards of the Daltonganj Municipality forthwith and until holding such elections, the outgoing Municipal Board be allowed to function till the constitution and the first meeting of the newly elected commissioners. Prayer has also been made to restrain the respondent authorities from interfering in any manner with the day-to-day functionings of the Municipal commissioners until the fresh election is held. It would be relevant to mention that this writ petition was although heard with CAV.J.C. 3089 of 1998 (R) and C.W.J.C. No. 3061 of 1998 (R) (reported in 2000 (2) BUR 1352) for sake of convenience it is disposed of separately.

2. It would appear from the materials on record that the election of the Commissioners of Daltonganj Municipality was conducted on 31-5-1993 in terms of unamended provisions of the Bihar & Orissa Municipal Act, 1922. As per Section 29 of the said Act, elected Commissioners were entitled to hold office for

a period of five years commencing from the date of general election of the Commissioners of the Municipality, whether elected or appointed.

3. From the counter affidavit filed by the Chief Executive Officer/Special Officer of the Municipality, it appears that after expiry of the terms of Municipality, the Deputy Commissioner by his letter dated 28-5-1998. as contained in Annexure-A, had requested the Commissioner, Urban Development, Government of Bihar, for immediate dissolution of the Committee since several irregularities, both financial and administrative were being committed which would be evident from Annexures B, C, E, F and G to the counter-affidavit. Learned State counsel, therefore, contended that having regard to the facts, as noticed above, and that apart since the Municipality has already completed its full term, there is no merit in this case.

4. Before going to the facts of this case, it would be appropriate to notice that with effect from 1-6-1993 the 74th Constitutional Amendment came into effect and the provisions relating to constitution of Municipalities in the 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 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 and Orissa Municipal Act, 1922.

5. It would further appear from Part IX-A of the Constitution that Articles 234 to 243Z arc the provisions relating to the constitution of Municipalities, its duration and functions. As per Article 243Q, every State shall constitute a Municipal Council for smaller urban area and a Municipal Corporation for larger Urban area. Article 243U contemplates 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", provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution, prior to the term, whereas Article 243U(3) prescribes criteria for election and constitution of the Municipality.

6. Undisputedly, Section 29 of the Amended Municipal Act is in conformity with the provisions prescribed under Article 243U of the Constitutional Amendment, that every Municipality until sooner dissolved under ay 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". There is no provision for extension of the term of the Municipality as it was available under the unamended Act.

7. Mr. Sinha, Senior counsel, appearing for the petitioner contended that from a bare reference to the second proviso to Section 390C as inserted by Bihar Act 2 of 1995, it would appear that the Municipality and its validly elected members are entitled to continue until a fresh election is held under the provisions of the Amended Act, Section 390C and its second proviso arc as under :

"390C. Savings-- (1) The Municipalities, and the Notified Area Committee on the commencement of this Act shall cease to function as such 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 :

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

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8. The question that arises for consideration is whether the DaKonganj Municipality which had not yet completed the term of five years as on 1-6-1993 can be allowed to continue and function in view of 2nd proviso to Section 390-C of the Amended Act ? As noticed above, as per the provisions of Article 243U of the Constitutional Amendment as well as Section 29 of the Amended Municipal Act, every Municipality until sooner dissolved under 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.

9. Article 243ZF contemplates continuance of laws and Municipalities in existence immediately before the commencement of the Constitution (74th Amendment Act, 1992), in these terms :

"243-ZF : Continuance of existing laws and Municipalities : Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the Commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier :

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of the State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State."

From a close reading of the aforesaid provisions it would appear that outer limit of "one year" was fixed to bring necessary amendments in any provision of law relating to Municipalities, in force in a particular State before incorporation of Part IX-A of the Constitution, consistent with the provisions contained in the said Part. In other words, anything inconsistent with the provisions of this Part may continue to be in force until amended or repealed by a competent Legislature or any other authority or till expiration of one year from the date of such

commencement, whichever is earlier.

10. As noticed above, with effect from 1-6-1993, 74th Constitutional Amendment came into effect incorporating the provisions relating to constitution of the Municipalities in the States as contained in Part IX-A of the Constitution. Accordingly extensive amendments were also made in Bihar and Orissa Municipal Act, 1922 by the Ordinance/ Act in 1994/95 in consonance with the provisions of Part IX-A of the Constitution. It has also been noticed that the provisions of the Act, as they now stand, contemplate automatic cessation of the term of office of the elected Chairman/Commissioners etc., unlike the provisions as stood prior to the amendment.

11. But as would appear from the provisions incorporated under Article 243ZF notwithstanding anything in this Part any provisions or any law relating to Municipalities in force in any State, immediately before the commencement of the 74th Constitutional Amendment, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or any other competent authority, or until the expiration of a period of one year from such commencement, whichever is earlier.

12. There is no doubt that with effect from 30-5-1994 by the Bihar Ordinance 13 of 1994, extensive amendments were made in Bihar and Orissa Municipal Act in tune of the constitutional amendment. But Section 390-C, the Savings and the proviso thereto were inserted under the Act with effect from 30-5-1995 by the Bihar Act 2 of 1995.

13. It was contended 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 Committee, if any, on the date of commencement of the Ordinance. Therefore, by reasons 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 so that there may not be any void. Reference in this regard was made to the decisions of this Court in the case of Bibhash Chandra Choudhary v. State of Bihar 1995 (1) Pat LJR 228 Bratendra Prasad Singh v. State of Bihar, 1996 (2) Pat LJR 443 and yet another decision in the same volume at page 445 to the case of "Nand Kishore Singh v. State of Bihar".

14. From the decisions as above, no doubt this Court had noticed 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 Area Committees, term of which had not expired, until the fresh election under the new laws. But the questions whether after expiry of the outer limit of the period of one year, as fixed under Article 243ZF from the date of 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 and ad hoc committees to continue to function till the constitution and the first meeting of the elected Commissioners of the Municipalities under the Amended Act were neither raised nor considered in those decisions.

15. Article 243ZF, as noticed above, provides continuance of existing laws and Municipalities. From its close reading, it would appear that outer limit of one year fixed to enable the Legislatures to bring necessary amendments in the Municipal Laws, consistent to the provisions, contained in Part IX-A of the Constitution. In other words, anything inconsistent with the provisions of this Part may continue to be in force until amended or repealed by the competent Legislatures within one year from the date of such commencement, whichever is earlier. But it will appear that ignoring the fact that the 74th Amendment came into force with effect from 1-6-1993 the State legislature has inserted the proviso to Section 390-C with effect from 30-5-1995 i.e. much after the cut off date of one year. Obviously therefore, after the expiry of the outer limit of one year, it was not within the competence of the State Legislatures to insert the proviso to Section 390-C, which is not only inconsistent to the provisions of Article 243ZF rather to the provisions of Article 243U as well.

16. Apart from the views, expressed above, it was also brought to our notice by the learned counsel for the State that having regard to some of the unreported decisions of this Court in the case of Baleshwar Prasad Yadav v. State of Bihar and others. (L.P.A. No. 1257 of 1997, disposed of on 16-1-1998) and the case of Md. Islamuddin v. The State of Bihar and others (L.P.A. No. 1190 of 1997, disposed of on 11-8-1998} as well as a decision of a learned single Judge in the case of Bijay Kumar Gupta v. State of Bihar and others (C.W.J.C. No. 664 of 1997, disposed of on 2-2-1999), the question regarding scope and applicability of the second proviso to Section 390-C is no longer res integra. It would appear from these orders that after interpreting the relevant provisions, it was held that 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 a Municipal Committee or Notified Area Committee is of five years from the date appointed for its first meeting and "no longer". Therefore, in view of the words "no longer" used under Article 243U, the second proviso to Section 390-C of the Amended Act does not survive. In other words, if any Municipality was existing since prior to 74th Constitutional Amendment, it can at best continue up to five years which in any case will come to an end in the year. 1998.

17. Therefore, taking into consideration all the facts, as noticed above, there appears no justification to interfere with the steps taken by the respondents to manage the affairs of the Municipality through the Executive Officer or Special Officer until fresh constitution of the Municipal Board under the provisions of the Amended Act. In the result, I find no merit in this case, hence the same is hereby dismissed.

S.K. Chattopadhyaya, J.

18. I agree.