
(2015) 09 PAT CK 0128
In the Patna High Court
Case No : CWJC No. 9171 of 2014

Syed Majid Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Bihar Municipal Act, 2007 — Section 20, 20(1)(a), 23, 25(4), 26

Citation : (2015) 4 PLJR 740

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Y.V. Giri and Satya Prakash Tripathi, for the Appellant; Kundan Bhadur Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Jyoti Saran, J.—Heard Mr. Y.V. Giri learned senior counsel for the petitioner, learned counsel for the State and Mr. Girish Pandey for the State Election Commission are present. Mr. Giri appearing for the petitioner supports the prayer of the petitioner claiming a declaration that the Deputy Chief Councillor/Deputy Mayor be declared as municipal authority under Section 20(1)(a) of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act").

2. Section 20 lists the municipal authorities and does not include a Deputy Chief Councillor/Deputy Mayor. In fact the election as well as the duties attached with the post of the Deputy Councillor are discussed in Section 23 and Section 26 respectively which are self-eloquent and in absence of there being any statutory prescription which answers query of the petitioner, no mandamus can be issued.

3. An alternative prayer is made that in absence of any duty/responsibility attached to the post of a Deputy Chief Councillor/Deputy Mayor, it should be excluded from the mischief of Section 25(4) of "the Act".

4. In my opinion, the prayers advanced by the petitioner cannot be accepted for the reason that whereas a declaration bringing the Deputy Chief Councillors/

Deputy Mayors within the ambit of Section 20(1)(a) of "the Act" is a legislative function, a challenge to the applicability of Section 25(4) of "the Act" on the Deputy Chief Councillors/Deputy Mayors would amount to questioning its vires. In either of the situations, the remedy for the petitioner lies elsewhere and not by way of the present proceedings.

5. The writ petition is disposed of accordingly. The petitioner, if so advised, may take recourse to such other remedy as may be available to him in law.