

Central Bihar Chamber of Commerce and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-29-2001

Judge : Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.

Appeal No. : C.W.J.C. Nos. 5188 of 1988 and 13190 of 2001

Appellant : Central Bihar Chamber of Commerce and ors.

Respondent : The State of Bihar and ors.

Judgement :

1. The order of 16 October 2001 had been written, let it be not misunderstood, on a consent by the State of Bihar and the State Election Commission to receive guidance as to from which date six months will be counted to return elected representatives to Nagar Panchayats and Municipalities upon elections. Prior to the writing of the order, and even today, it is acknowledged between learned Counsel for the State Government Messrs. S.K. Ghosh, AAG 2, R.K. Dutta, S.C. 4, and S.A. Hussain, S.C. 6, and learned Counsel for the State Election Commission, Mr. K.B. Nath that the two events which are contemplated in the Constitution of India to reckon six months, and hold elections to make municipalities in Bihar self-governing institutions are not available. Today is not the time to go into the circumstances which have brought such a state of affairs and a reflection on the causes, as at this juncture it would be a negative approach. The election to Municipalities is a commitment of the Constitution of India and has to be held and within the period ordained. The Court has sufficiently been assured on

this both by the State Government and the State Election Commission.

2. Learned Counsel appearing for the State Election Commission acknowledges that (a) the dissolution or (b) the expiry of the term of Municipalities of Bihar is a circumstance which took place more than 30 years ago. He mentions the year 1969. Thus, he accepts that the two factors, dissolution of a municipality or the expiry of the term of a municipality are too far back in time so as to constitute the municipality, within six months, with elected representatives. Why are these two factors relevant? The Constitution of India makes them relevant. In context, it is Article 243U, in Chapter IX-A, entitled MUNICIPALITIES. The Constitution of India, now, does not permit any let or hindrance and obliges the State as a policy that institutions of self-government (Panchayats, Municipalities, etc.) on the expiry of their term or dissolution, the next elected local body must be functional within six months.

3. But, the makers of the Constitution had never envisaged that in the State of Bihar (or some other States) a bureaucrat would run the municipality and lesser bureaucrats the village panchayat. Who swallowed up local self-government? The big politician saw decentralisation in their area of representation reflected at the legislatures of the State capitals. In an emerging republic such politicians did not accept this situation too kindly. The bureaucrats as a prize got areas of local self-government; Municipalities, Zila Parishads and village Panchayats as their Zamindari. A hundred percent official venture occurred by hijacking institutions of self-government on a State-coach to adventurism for almost three decades by using the Ordinance Raj in an off-legislature session. This aspect has been noticed by the Supreme Court. But, today the supercession of local government is a fact on record, a dark chapter in the history of politics of Bihar. Indiscriminate continuous use of ordinance Raj for the last thirty years, is history noticed by the Supreme Court. Political history on local self-government also judges the content of legislature and the civil service of the last decades in having arranged the supercession of local Government and consented to this blue print for killing grass-root democracy. This is a political paradox in a republic practising carrying democracy. Thus, there is insensitivity to speed up the return of local self-government even though the time frame, today stands given by the amended

Constitution of India. The dominant purpose is to have an elected municipality and the gap between the outgoing and incoming elected bodies shall not be more than six months.

4. In these circumstances, when the order of 16th October, 2001 had been delivered the matter was adjourned for 19th October, 2001 for the announcement of the date of the municipal elections. The announcement was not meant so much for the Court but was meant to be indicated to the people of Bihar. In a participatory exercise, in a public interest litigation, the State Government and the State Election Commission were seeking guidance because the two events referred to in the Constitution are not available. These are the events when an institution of self-government, municipality in the present case, may see dissolution or the expiry of its term. If the dates of these events were available then the situation before the Court would not have been there.

5. Avoiding formalising its stand, the discipline set by the Constitution of India, has been avoided. No affidavit has been filed by the State Election Commission, despite the Court seeking it unless a date for elections on the guidance given by the Court, in the order of 16th October, 2001, was forthcoming. An affidavit was not filed on 19th October, 2001 when the matter was listed.

6. On 19th October, 2001 Counsel for the State Election Commission stated that the date will go beyond six months from the date of Constitution of Nagar Panchayats and Municipalities. On that day the State Election Commissioner appeared to interject the proceeding just before rising of the Court and gave his difficulties but not the date of election nor an affidavit. Yesterday, (28th November, 2001) this matter was taken up two matters co-related were normally listed together i.e., CWJC. No. 13190 of 2001: Bihar Rajya Panchayat Parishad v. Union of India and

Ors. and CWJC. No. 5188 of 1998: Central Bihar Chamber of Commerce and Ors. v. State of Bihar and

Ors. Yesterday, Counsel for the Election Commission intimated the Court that he has instructions to State that it is not possible to hold elections prior to the close of

this financial year.

7. The Court had again given latitude that a date be intimated upon the order of 16th October, 2001. But the statement made on behalf of State Election Commission today by its Counsel is; I have instructions to State that the State Election Commissioner had told him 'Hamkojo 19th October,

2001 ko kahna tha hamne kah diya' (Whatever I had to say on 19th October, 2001 I have said it.)

8. The Court is not reiterating the complications which will be entailed detrimental to the people of Bihar in municipal areas to face a continued situation of lost public funds and grants. The Government of India has already indicated that it will not deliver these grants unless the State of Bihar takes the Panchayats and the Municipalities into elections. The reason the Court was expressing anxiety is because it had been indicated by the Government of India to the State of Bihar that funds as were available for allocations by the 10th Finance Commission and/or the 11th Finance Commission will be available only when local bodies see an election. After the Panchayat elections were held the Government of India has released the grants as were allocated to the States by the 11th Finance Commission, that is, of the financial year, 2001-2002. But for the Panchayat elections, the fund has lapsed. The funds of the lapsed years 1995 to 2000 arising out of the 10th Finance Commission initially were not being made available. But, the Government of India on the observations of the Court in like and similar public interest litigation, sanctioned the funds but without giving permission for the utilisation of them. For utilisation, the Government of India was very clear in its announcement to the State of Bihar that expending will be permitted provided the elections to local bodies are completed. Yesterday, Counsel for the State Government confirmed that with the Panchayat elections having been taken through and with the Panchayats functioning, the Government of India has now sanctioned the utilisation of the lapsed grants of the years 1996-97 amounting to Rs. 126.80 crore. The apprehensions of the Court, thus, were not unfounded that there would be complications of Bihar losing out on public grants from federal funds if the municipal elections are not held prior to the close of the financial year.

9. The attitude of one authority is polarised, so much so that the Court gets the feeling that this authority is not prepared even to talk with the State Government so as to make efforts whether there is a possibility of holding elections before the close of the financial year. No solution will arise unless there is a well meaning dialogue between the State Government and the State Election Commission.

10. Should there be any development then liberty is granted either to the State Government or the State Election Commission to move the Court if there be a date set for municipal elections so that the result of elections to the 77 Nagar Panchayats and 32 Municipalities, could be announced before the close of the financial year.

11. For other matters, the listing shall remain.

12. Reutilisation of funds received for the benefits of the Panchayat on which the State has filed an affidavit yesterday in CWJC. No. 13190 of 2001, learned Counsel appearing for the petitioner states that in this context the matter be adjourned, so that he may verify whether allocations have, in fact, been made to the Panchayats or not. The Court may be moved on this. CWJC No. 13190 of 2001 adjourned for a week.

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