

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2621 of 2014

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1. Abha Lata, Wife of Sri Ramesh Kumar, Resident of Mohalla- Sherullahpur (Nandgaon), P.O. and P.S. Shastri Nagar, District- Patna
 2. Jai Narain Sharma, Son of Late Kumar Narain Sharma, Resident of Shyam Bhawan, Jagarnath Singh Lane, Chaudhary Tola, P.O. Mahendru, P.S. Sultanganj, District- Patna
 3. Binod Kumar, Son of Sri Janak Prasad Singh, Resident of Mohalla- Mohanpur, Punai Chak, P.O. and P.S. Shastri Nagar, District- Patna
 4. Kanti Devi, Wife of Sri Manoj Kumar, Resident of Mohalla- Pua Gali, Jhauganj, P.O. Patna City, P.S. Chowk, District- Patna
 5. Binod Kumar, Son of Late Hari Nandan Prasad, Resident of Mohalla- Maharajganj, P.O.- Gulzarbag, P.S.- Alamganj, District- Patna
 6. Neyaz, Son of Badruddin Hasan, Resident of Mohalla- Dargah Road, Mandai, P.O.- Mahendru, P.S.- Sultanganj, District- Patna
 7. Sanjay Kumar, Son of Sri Krishna Kant Prasad, Resident of Mohalla- Kumharar, P.O. Bahadurpur Housing Colony, P.S. Agam Kuan, District- Patna
- All the writ petitioners are the Members of the Empowered Standing Committee of Patna Municipal Corporation, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna
4. The Municipal Commissioner, Patna Municipal Corporation, 'C' Block, Maurya Lok Complex, Patna

.... Respondent/s

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Appearance :

For the Petitioners : Mr. S.B.K. Mangalam, Advocate
For the State : Mr. Roy Shivaji Nath, AAG-3
Mr. Shambhu Nath, AC to AAG-3
For the PMC : Mr. H.S. Himkar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 20 -05-2015

Petitioners are the members of the Empowered



Standing Committee of Patna Municipal Corporation (hereinafter referred to as the “Corporation”). They have filed this writ petition praying, inter alia, to direct respondent no. 4, Municipal Commissioner of the Corporation to carry out resolution of the Empowered Standing Committee or the Board of Councillors or any Committee of the Corporation in the light of the provisions of the Bihar Municipal Act, 2007 (hereinafter referred to as the “Act”). Reference in this regard is made to sub-section (6) of Section 27-B of the Act which inter alia provides the power, function of the Municipal Commissioner, who is the Chief Municipal Officer of the Corporation established in terms of Section 6 of the Act. For ready reference sub-section (6) of Section 27-B of the Act is quoted hereinbelow :

“(6) The Chief Municipal Officer shall carry into effect every resolution of the Empowered Standing Committee or the Board of Councillor or of any Committee of the Municipality which is in conformity with provisions of law unless such resolution is set aside or suspended under this Act by the appropriate authority.”

2. In the writ petition and by filing supplementary, second, third, fourth supplementary affidavit learned counsel for the petitioners placed on record several decisions of the Empowered

Standing Committee, which according to the petitioners have not been carried out by respondent no. 4.

3. A counter affidavit has been filed on behalf of respondent no. 2, Secretary, Urban Development and Housing Department, Government of Bihar stating in paragraph 4 that Urban Development and Housing Department under Letter No. 218 dated 05.07.2014 has asked the Municipal Commissioner to provide paragraph-wise comments and report upon the allegations framed against him by Mayor and Ward Councillors. Consequent to such instruction Municipal Commissioner submitted a comprehensive report framing counter-allegations against the Mayer and the Ward Councillors. In paragraphs 5, 6 of the said counter affidavit it has been averred that Municipal Commissioner is an I.A.S. officer of 2005 batch and there is no officer in the department senior to him except the Secretary, Urban Development and Housing Department, in the circumstances, the investigation of the allegations and counter-allegations framed by or against the Municipal Commissioner has been entrusted to District Magistrate, Patna with approval of Chief Secretary, Bihar and referred to Order No. 202 dated 25.07.2014, Annexure-R/2-A.

4. Respondent no. 4 filed I.A. No. 8509 of 2014 praying inter alia to call for the records of C.W.J.C. No. 11003 of





2006 dismissed as withdrawn under order dated 14.09.2006, C.W.J.C. No. 13112 of 2011 dismissed under order dated 12.08.2011, C.W.J.C. No. 12541 of 2011 in which notice issued under order dated 12.09.2011, C.W.J.C. No. 3045 of 2013 in which notice issued under order dated 26.02.2013, C.W.J.C. No. 12753 of 2011 admitted under order dated 13.12.2013, C.W.J.C. No. 18241 of 2014 in which notice issued under order dated 21.10.2014, I.A. No. 324 of 2014 for vacating the order dated 08.07.2013 and with respect to those records it is submitted that the genuineness and correctness of the assertions made in the writ petition be considered as according to respondent no. 4 assertions were made suppressing the aforesaid orders passed by the High Court. Respondent no. 4 stated in paragraph 2 of the interlocutory application that the writ petitioners have made declaration in paragraph 52 of the writ petition that *“the petitioners have got no other alternative and efficacious remedy except to move this Hon’ble Court for ventilation of their justified grievance”* but such declaration is not correct as petitioners have alternative and efficacious remedy available under proviso to Section 41 of the Act whereunder the councillors of the Corporation are empowered to pass resolution asking the State Government to withdraw the services of the Municipal Commissioner from the Corporation by 2/3rd majority of the total number of Councillors

holding office on the date of meeting. In paragraph 3 respondent no. 4 averred that the petitioners have not approached the High Court with clean hands as their declaration made in paragraphs 52, 53 of the writ petition are false. In paragraph 4 respondent no. 4 averred that bare perusal of the statement and submissions made in the writ petition and the supplementary affidavit(s) indicates that the writ petition has been filed on behalf of Afzal Imam, Chief Councilor of the Corporation and with a view to maintain the writ petition, according to respondent no. 4, Chief Councilor used the name of his nominees, the members of the Empowered Standing Committee of the Corporation. In this connection, it has further been averred that petitioner no. 3 has full knowledge of C.W.J.C. No. 11003 of 2006 which was withdrawn under order dated 14.09.2006. In paragraph 5 respondent no. 4 averred that C.W.J.C. No. 13112 of 2011 was filed impleading the then Municipal Commissioner Sri Devesh Sehra, I.A.S. as respondent no. 5 and the said writ petition considering both the proviso to Section 41 of the Act was dismissed by the Division Bench under order dated 12.08.2011, Annexure-B/4. In paragraph 6 respondent no. 4 averred that C.W.J.C. No. 12541 of 2011 has been filed with a prayer to remove the then Municipal Commissioner Sri Devesh Sehra in which notice has been issued under order dated 12.09.2011. In paragraph 7 respondent no. 4 averred that C.W.J.C.





No. 3045 of 2013 was filed impleading the Chief Municipal Commissioner Sri Adesh Titarmare as respondent no. 5 praying inter alia for his removal but in the said writ petition notice was issued under order dated 26.02.2013, Annexure-D/4. In paragraph 8 respondent no. 4 averred that C.W.J.C. No. 12753 of 2011 has been filed by the Mayor and others praying inter alia to declare sub-rule (4) of Rule 10 of the Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010 as ultra-vires in view of Article 243P(e) of the Constitution on the ground that by virtue of the said provision the State Government has virtually taken away all powers and functions of the Corporation and the Empowered Standing Committee cannot take any decision. Aforesaid writ petition has been admitted for hearing under order dated 13.12.2013. In paragraph 9 respondent no. 4 averred that I.A. No. 324 of 2014 has been filed in C.W.J.C. No. 8152 of 2013 by the writ petitioners for vacating the order dated 08.07.2013 whereunder this Court directed not to transfer the present Municipal Commissioner without prior permission of this Court contrary to the mandate of Section 27-B of the Act and further that the appointment of the present Municipal Commissioner has not been made in consultation with the Empowered Standing Committee, as is required under sub-section (4) of Section 36 of the Act. In paragraph 10 respondent no. 4



averred that another writ petition C.W.J.C. No. 18241 of 2014 has been filed with prayer that State Government has perhaps forgotten the responsibilities cast upon it under sub-section (4) of Section 36 of the Act which require the State Government to consult the Empowered Standing Committee before appointing the Municipal Commissioner. In paragraph 11 respondent no. 4 asserted that from the writ petitions referred to above, it is apparent that similar grievance, as has been raised in the present writ petition, was raised in the writ petitions referred to above. In paragraph 12 respondent no. 4 asserted that perusal of the averments made in the interlocutory application as also in the other writ petitions referred to above would indicate that the Mayor and his associates are only interested in generating litigation, which is affecting the development work of the Corporation. In paragraph 13 respondent no. 4 asserted that the writ petitioners and the Chief Councilor of the Corporation have suppressed the material facts from the High Court. In paragraph 14 respondent no. 4 asserted that in the writ petition relief prayed for is that every resolution of the Empowered Standing Committee is obligatory on the part of the Municipal Commissioner to get the same implemented and referred to resolution dated 23.08.2013 whereunder Empowered Standing Committee removed Sri Shailendra Kumar Sharma from the post of legal advisor-cum-



retained counsel of the Corporation and appointed Sri Shashi Bhushan Kumar Mangalam, Advocate, Patna High Court as legal advisor-cum-retained counsel of the Corporation whereafter Sri Mangalam under letter dated 17.09.2013 requested the Corporation to notify him as legal advisor and forward the notification to him so that the same may be placed before the Joint Registrar (List & Computer). In paragraphs 16, 17 respondent no. 4 with respect to the judgment of the Supreme Court in the case of S.P. Gupta AIR 1982 SC 149 submitted that perusal of Annexures-G/4, H/4 indicates that the writ petition is not a Public Interest Litigation but a personal interest litigation. In paragraph 18 respondent no. 4 averred that on 13.06.2014 enquiry was conducted by Secretary, Urban Development and Housing Department in connection with attendance of Safai Mazdoor at Bailey Road, Asiana More and it was found that 18 out of 35 Safai Mazdoors were absent. In compliance of the report/ instruction of the Secretary contained in Memo No. 179 dated 16.06.2014 respondent no. 4 suspended Incharge Sanitary Inspector of Ward No. 4 under Memo No. 4030 dated 19.06.2014 with immediate effect. In paragraph 19 respondent no. 4 stated that Incharge Sanitary Inspector has filed show cause mentioning therein that under the pressure of Ward Councilor of Ward No. 4, who happens to be petitioner no. 1 in the instant writ case, he submitted



attendance-sheet showing 90% presence of Safai Mazdoor and after considering the said show cause suspension of Incharge Sanitary Inspector Asarfi Ram has been vacated under Memo No. 6296 dated 18.10.2014. In paragraphs 21, 22 respondent no. 4 referred to order dated 04.09.2014 passed by this Court and the enquiry entrusted by the State Government to the District Magistrate, Patna under Memo No. 2242 dated 25.07.2014 and the report submitted by the District Magistrate, Patna dated 07.11.2014 whereunder District Magistrate has held that the allegations levelled against the Municipal Corporation do not hold ground. In paragraph 23 respondent no. 4 averred that this Court under order dated 11.08.2014 specifically referred to Annexure-13 of the first supplementary affidavit filed by the petitioners and directed the Corporation that development scheme of the Corporation should not suffer on account of rivalry between the Mayor and the Municipal Corporation, rather it should be implemented. In this connection, respondent no. 4 stated that on scrutiny and verification made by him it has been found that all the development scheme of the Corporation have already been implemented and necessary steps have already been taken regarding their execution but the resolution, as incorporated in Annexure-13, does not relate to development and has not been implemented. In this connection, respondent no. 4 stated that perusal of statement of



accounts so released in the financial years 2012-13, 2013-14, 2014-15 (up to 31.10.2014) under different heads clearly show that 24.01 crores in the financial year 2012-13, 33.95 crores in the financial year 2013-14 have been spent. Thus, according to respondent no. 4 41.39% increase in the allocation of amount has been ensured in financial year 2013-14 in comparison to 2012-13. In this connection respondent no. 4 has also stated that 30.10 crores has already been released until 31.10.2014 which is more than 114% of the amount released during the same period in financial year 2012-13. Aforesaid release is also indicative of the fact that the amount released is in equal proportion in all the 72 wards of the Corporation and no pick and choose has been made by the Municipal Commissioner. In paragraph 24 respondent no. 4 asserted that special meeting of the Board was convened on 21.10.2014 and necessary resolution passed for execution of development scheme. In paragraph 25 respondent no. 4 stated that in view of the statements made in the interlocutory application and the materials available on record, the allegations made in the writ petition is absurd and baseless.

5. By filing supplementary counter affidavit respondent no. 4 furnished under Annexure-Q/4, the detail particulars of letter number, memo number and date whereunder the development scheme of the Corporation is implemented and

submitted that interference made by the Empowered Standing Committee in discharge of executive functions by the Municipal Commissioner has to be contained.

6. Respondent no. 2 filed supplementary counter affidavit placing on record Letter No. 10695 dated 08.11.2014 whereunder District Magistrate, Patna submitted his report dated 07.11.2014 in compliance of the order of the Government contained in Letter No. 202 dated 25.07.2014, perusal whereof indicates that thereunder District Magistrate, Patna held that various allegations levelled against the Municipal Commissioner do not hold ground as they are more of a result of distrust and suspicion in mind of petitioners that Municipal Commissioner is abetting with the other elected members of the Corporation.

7. Having heard counsel for the parties and having considered the pleadings made by them, it is observed that the Corporation is a municipality established under the Act. It has to discharge the municipal functions in the light of the provisions of the Act based on the principles of participation in, decentralization, autonomy and accountability of Urban Self Government at various levels so that reform in financial management and accounting system be achieved in the Corporation. The fund of the Corporation is spent by practicing financial management and sound accounting system. In





the event, there is disharmony in the functions of the Municipal Commissioner and the Board of Corporators, the Corporators are at liberty to request the State Government to recall the services of the Municipal Commissioner by passing resolution to that effect with 2/3rd majority of the total number of councillors holding office on the date of resolution. Reference in this connection, may be made to the Division Bench judgment of this Court dated 12.08.2011, passed in C.W.J.C. No. 13112 of 2011, Annexure-B/4 whereunder validity of second proviso to Section 41 of the Act was upheld.

8. In the light of the pleadings made by the parties, referred to above, the writ petition is disposed of observing that in the event, Ward Councillors are not satisfied with discharge of functions by the Municipal Commissioner of the Corporation they may either pass resolution in terms of first proviso to Section 41 of the Act or request the State Government to conduct enquiry on its own and take appropriate action in the matter. In the instant case, State Government chose to make enquiry through District Magistrate, Patna, who submitted report dated 07.11.2014 holding that the various allegations levelled against the Municipal Commissioner do not hold ground as they are more of a result of distrust and suspicion in the mind of the allegationist Councillors that Municipal Commissioner is abetting with other elected members

of the Corporation, as such, in the light of the report dated 07.11.2014 no action is called for against respondent no. 4.

(V.N. Sinha, J.)

I agree.
Prabhat Kumar Jha, J.

(Prabhat Kumar Jha, J.)

Rajesh/N.A.F.R

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