

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10386 of 2015

Patna Nagar Nigam Kamgar Union through its General Secretary Ram Yatan Prasad, Son of Late Jatu Singh, resident of Village Parsa Bazar, Police Station Parsa Bazar, District Patna, at Present General Secretary of Patna Nagar Nigam Kamgar Union, Head Office Patna Nagar Nigam Eastern Side, Budh Marg, Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Urban Development and Housing Department, New Secretariat, Patna.
3. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok, Patna.
4. The Additional Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
5. The Deputy Secretary-cum-Director, Urban Development and Housing Department, New Secretariat, Patna.

.... Respondents

Appearance :

For the Petitioner : Mr. Rupak Kumar, Advocate
For the Respondents : Mr. Mani Kant Mishra, GP25
For P.M.C. : Mr. Sanjay Prakash Verma, Advocate
For the State : Mr. Gopi Jha, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 27-07-2015

I have heard learned counsel for the petitioner and the Patna Municipal Corporation.

Though the impugned order contained in Annexure-1 has been challenged on diverse grounds in the writ petition, however, at the time of hearing, a short issue has been raised by the petitioner regarding the competence of the authority concerned in passing such order.

The petitioner, which is a Union in the name and style of Patna Nagar Nigam Kamgar, had earlier approached this Court by



filing C.W.J.C. No.19412 of 2012 raising grievance that the employees should be given advantage of opting pension in terms of 1986 Pension Rules. A Single Bench of this Court had opined that the matter required to be considered by the Chief Executive Officer/Municipal Commissioner, Patna and a decision should be communicated to the petitioner within a reasonable time. When no decision was taken then a petition for initiation of contempt bearing M.J.C. No.2977 of 2014 was filed by the petitioner-Union. However, it appears that, during the pendency of the contempt case, final order was passed, a copy of which has been appended as Annexure-16. After such order having been filed, the M.J.C. No.2977 of 2014 came to be disposed of by the Single Bench granting liberty to the petitioner to assail the order. Hence, this writ application came to be filed.

It is contended that there was a specific direction of this Court that the Chief Executive Officer/Municipal Commissioner would be required to take a decision in the present case, however, the matter appears to have been considered and decided by the Additional Municipal Commissioner, Patna Nagar Nigam. Learned counsel for the Corporation, when confronted with the question, submitted that the order has been passed by the Additional Municipal Commissioner upon the direction of the Municipal Commissioner.

Learned counsel appearing for the Corporation has not



been able to come up with any provision of law which entitles and empowers the Additional Municipal Commissioner to take a decision in such a situation. That apart, there was a specific direction of this Court that the matter should be considered and decided by the Chief Executive Officer/Municipal Commissioner. The Chief Executive Officer has been defined under Sub Section (21) of Section 2 of the Bihar Municipal Act, 2007 which is extracted below for better appreciation :

“ Chief Municipal Officer” means-

- (i) in relation to a Municipal Corporation, the Municipal Commissioner, and
- (ii) in relation to a Municipal Council or Nagar Panchayat, the Municipal executive Officer.”

Bare perusal of the aforesaid provision reveals that the Chief Municipal Officer essentially means, in relation to a Municipal Corporation, the Municipal Commissioner and, thus, unless there is a power to delegate such matter to the concerned officer by the Municipal Commissioner he would not be entitled to take a decision. Learned counsel for the Corporation has miserably failed to point out any provision under the Act empowering the Municipal Commissioner to delegate such matters to the Additional Municipal Commissioner. That apart, the direction of this Court was also in clear terms to the Municipal Commissioner to take a decision in the matter.

As a result, this application succeeds on the aforesaid

short question. In above view of the matter, other issues are not required to be considered.

Accordingly, the impugned order is quashed and set aside involved in this case and the matter is remitted back to the Municipal Commissioner to take a fresh decision in accordance with law. While doing so, he would be obliged to take cognizance of the issues raised by the petitioner.

Let the matter concerned be decided expeditiously preferably within a period of three months from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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