

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9171 of 2014

=====

Syed Majid Hussain son of Syed Bashir Hussain, resident of Ward No. 43,
Azad Road Chandwara, P.S. Town Thana Muzaffarpur, at present Dy. Chief
Councillor (Dy. Mayor) Municipal Corporation, Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Urban Development of Housing Department Govt. of Bihar, Patna.
3. The State Election Commission through State Election Commissioner, Bihar, Patna.
4. The District Magistrate, Muzaffarpur.
5. The Chief Councilor (Mayor) Municipal Corporation Muzaffarpur.
6. The Municipal Commissioner, Municipal Corporation, Muzaffarpur.

.... Respondent/s

=====

Appearance:

For the Petitioner/s : Mr. Y.V. Giri, Advocate
Mr. Satya Prakash Tripathi, Advocate
For the Respondent/s : Mr. Kundan Bhadur Singh, SC-22

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 10-09-2015 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').

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.

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'.

In my opinion, the prayers advanced by the petitioner can not 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.

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.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--