

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19373 of 2015

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1. Nilesch Prasad, S/o Laxmi Rai, resident of Mohalla Kurji, Gate No.- 65, P.S.- Digha, District- Patna.
 2. Smt. Mamta Devi, W/o Raju Kumar, resident of Village- Makdumpur, P.S.- Digha, District- Patna.
 3. Smt. Shashi Devi, W/o Bindeshwar Rai, resident of Mohalla Saidpur Kothiya Kurji, P.S.- Digha, District- Patna.
 4. Sudhir Kumar Singh, S/o Ramdeo Singh, resident of Mohalla Kurji, Gate No.- 77, P.S.- Digha, District- Patna.
 5. Rajesh Kumar, S/o Mannu Ram, resident of Mohalla- Mainpura Sidheshwarnagar, P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Government of Bihar, Patna.
2. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
3. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The State Election Commission through the State Election Commissioner, 3rd Floor, Sone Bhawan, Bihar, Patna.
5. The Deputy Secretary, State Election Commission, 3rd Floor, Sone Bhawan, Bihar, Patna.
6. The District Magistrate-cum-District Election Officer (Panchayat), Patna, District- Patna.
7. The Deputy Development Commissioner, Patna, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr.Sri Prakash Srivastava, Adv. Mr. Ranjeet Choubey, Adv. Mr.Jainandra Kumar, Adv.
For the Respondent-State:	Mr. R.K. Priyadarshi, S.C.32 Mr. Kundan Kumar, A.C. to S.C. 32
For the S.E.C. :	Mr. Amit Srivastava, Adv. Mr. Sanjeev Nikesh, Adv.
For the P.M.C. :	Mr. Prasoon Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-03-2016

Heard Mr. Sri Prakash Srivastava, learned counsel for the
petitioners, Mr. Rabindra Kumar Priyadarshi, learned S.C.32 and Mr.

Amit Shrivastava, learned counsel for the State Election Commission.

The petitioners are aggrieved by the order dated 30.11.2015 passed by the State Election commission, Bihar, in case No. 21 of 2015 whereby on an application made by the District Magistrate-cum-District Election Officer, Panchayat, the elected Mukhiya (s) of the Gram Panchayat, West Digha, East Digha, North Mainpura, West Mainpura and East Mainpura have been declared disqualified to hold the post of Mukhiya in the light of the stipulations underlying Section 136(2) read with Section 135 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as 'the Act') as amended from time to time.

The detailed facts stand noted in the order passed by this Court on 22.12.2015 and 29.1.2016 and briefly stating, a notification was issued in the Department of Urban Development and Housing on 27.11.2007 notifying the areas in question which until that said date continued to form Gram Panchayat, as municipality under the provisions of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Municipal Act'). The said notification was published in the gazette on 30.11.2006. It is being aggrieved by the notification constituting the areas into a municipality that the matter reached the civil court and the contest ultimately went in favour of the State until the Supreme Court, upholding the constitution of the municipality. In between the contest an election was held for the Panchayat(s) in

question in 2011 and the petitioners herein were elected Mukhiyas whose term is to expire on 22.5.2016.

It is after the legal issues raised in the civil suit got finally settled under the orders of the Supreme Court that the District Magistrate, Patna moved the State Election Commission for appropriate orders on the continuation of the Panchayat giving rise to Case No. 21 of 2015 and which has culminated in the order impugned disqualifying these petitioners. This matter was taken up for consideration on 22.12.2015 and this Court while seeking a response from the respondents as to the disqualification of the petitioners in the admitted circumstances stayed the order of disqualification passed by the State Election Commission.

It is under the orders of this Court that affidavits have been filed not only by the Principal Secretary Panchayati Raj Department but also by the Urban Development Department but none of the counter affidavits do answer the query of this court as to how these petitioners could be held disqualified when the Panchayat Election of 2011 was held by the respondents themselves despite the notification dated 27.11.2007 constituting the municipality and whether a formal notification has been issued as mandated under Section 151 of 'the Act' dissolving the Panchayat(s) in question. Although Mr. Priyadarshi invited the attention of this Court towards the application



filed by the District Magistrate before the State Election Commission present at Annexure-B series to demonstrate the intent of the State and the steps taken for denotification of the Panchayats under Section 151(1) of 'the Act' but the exercise remains half hearted. The intent to do so may be reflected from the letter dated 14.1.2016 of the District Magistrate and which has also been approved by the State Election Commission in its order dated 18.1.2016 but then the mandatory requirement to denotify the Panchayats in question as provided under Section 151 (1) of 'the Act' is yet to take place by a valid notification. In the meanwhile the election to the Panchayats have been notified by the State Government and a notification under Section 124 of 'the Act' was issued on 25.2.2016.

The facts discussed thus confirms that even the State Government in its Urban Development Department has taken a laid back attitude towards the matter in issue and have allowed the Panchayats to complete their tenure until 22.5.2016. Section 12(8) of the 'Municipal Act' provides for the administrative control of such transitional areas during the interregnum period and permits the local authority having jurisdiction over such area before the constitution of the municipality to continue for a period not exceeding 6 months from the date of notification under Section 6 of the 'Municipal Act'.

This very issue came up for consideration before the Division



Bench and paragraphs 7 to 11 are sufficient indication of the infirmity in the order under challenge. The Division Bench of this Court in the case of **Rabindra Choudhary Vs. State of Bihar & Ors.** Reported in **2012(2)PLJR 671** while taking note of the statutory provisions underlying the Bihar Panchayat Raj Act, the Bihar Municipal Act and the transitional governance of the area in question has observed as such in paragraphs 10 and 11 of the judgment which reads as under:

“10. Thus, under the Act of 2007, once an area is declared to be a ‘Municipality’ within the meaning of Clause (66) of Section 2 of the Act of 2007, the local authority already in office cannot be continued for more than six months thereafter. The legislative intent in allowing the existing body to continue for not more than six months is apparent. Once an area is declared to be a Municipality, its Councillors are required to be elected. Till such time the Councillors are elected and they start performing their duties in the manner prescribed under the Act of the 2007 and the Rules made thereunder, the functions of the municipality are required to be performed. Till the election is held and the elected body takes over, for the interregnum period, the existing body shall continue to manage the business of the newly constituted municipality. Once the election of the municipality is made, such body would automatically cease to exist. The affairs of the municipality then would be conducted by the newly elected municipality.

11. In view of the abovereferred legal consequence, the appellants could not have continued in office once the election of the municipality was held and the results were declared on 20th September 2011. The denotification of the Gram Panchayats is a legal consequence of constitution of the municipality.”

(Emphasis is mine)

The present case has its own peculiar features for in the present case the notification was issued on 27.11.2007 and thus the 6 months

period stood expired long back and whereafter the respondents have gone ahead to hold the Panchayat Elections for these areas in 2011.

In view of the extra ordinary facts of the present case and the legal position so discussed by the Division Bench as well as the undisputed fact that although steps have been taken by the State Government for denotification of the Panchayats in question but the said exercise has not been taken to its logical conclusion either by issuance of a statutory notification under Section 151(1) of 'the Act' in the District gazette or by holding election for the municipal area so constituted, it becomes undeniable that the Panchayat(s) in question continue to possess their legal character and the petitioners cannot be held disqualified to continue on their posts under Section 135 and 136 of 'the Act' rather have a right to continue until the completion of their respective tenure or until such time that a denotification takes place under Section 151(1) of 'the Act' whichever is earlier.

For the reasons aforementioned, the order dated 30.11.2015 passed by the State Election Commission, Bihar, in Case No. 21 of 2015 cannot be upheld and is according set aside. The consequences shall follow.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

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