

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7492 of 2016

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1. Ram Prakash Mahto Son of Late Swaroop Chand Mahto, Resident of Mohalla - Naya Tola, P.O. and P.S. - Katihar, District -Katihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner, the State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary, the State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna.
6. The District Magistrate - cum - District Election Officer (Municipality), Katihar, District - Katihar.
7. The Katihar Municipal Corporation, through the Municipal Commissioner, P.O., P.S. and District - Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. B.K. Manglam, Adv.

For the State : Mr. P.K.Verma, AAG 5
Mr. Kinkar Kumar, SC 27

For the State Election
Commission : Mr.Amit Srivastava, Adv.
Mr.Sanjeev Nikesh, Adv.

For the Katihar Municipal Corporation: Mr. Vinay Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-05-2016

The petitioner prays for a writ in the nature of mandamus to restrain the respondent authorities of the Urban Development and Housing Department, Government of Bihar in proceeding with the request made by the State Election Commission as contained in letter No.2416 dated 28.3.2016 whereby the election schedule for reconstitution of the Katihar Municipal Corporation and Purnea



Municipal Corporation has been proposed. A copy of such communication is present at Annexure-6 to the writ petition. The petitioner also seeks a mandamus to the authorities of the Urban Development and Housing Department to first ascertain the population of the different caste including those who have been included in the list of Scheduled Tribe vide notification dated 2.7.2015 of the State Government.

A third prayer made by the petitioner is for directing the authorities to undertake the exercise of rotation of the wards in the manner of reservation of seats as according to the petitioner, the provisions of Section 12(2) provides for undertaking such an exercise after two consecutive elections which according to the petitioner has already taken place in 2007 and 2010.

Mr. S.B.K. Mangalam has appeared for the petitioner while the State is represented by Mr. P.K. Verma, learned AAG 5 and Mr. Kinkar Kumar learned S.C.27 and the State Election Commission is represented by Mr. Amit Srivastava and Mr. Sanjiv Nikesh and Katihar Municipal Corporation is represented by Mr. Vinay Ranjan.

Mr. Mangalam learned counsel for the petitioner has referred to the proviso to Section 13 of the Bihar Panchayat Raj Act (hereinafter referred to as 'the Act') to submit that an obligation is cast upon the State Government to determine the number of



Councillors for each municipality before every election by way of notification and which is mandatory in nature. It is submitted that the manner of calculation of the number of Councillors is provided in the table attached to the provision. It is stated that the legislature has provided for an additional Councillor on every 25000 population above the two lacs population. It is argued that as per the 2011 census, the population of Katihar is 2,40,177. It is argued that a minimum of 45 Councillors has been provided for two lacs population and thus 45 wards were constituted for the Corporation in the last Corporation Election. It is stated that since this population figure has increased to 2,40,177 then the authorities concerned were under a duty to provide for an additional Councillor for this enhancement in population but this exercise has not been done and the authorities of the Urban Development Department, Government of Bihar along with the authorities of the State Election Commission are proceeding to hold elections for reconstitution of the Corporation on the basis of the wards as existing in the previous elections i.e. 45 wards. It is the argument of Mr. Mangalam that where the statute provides an exercise to be performed in a particular manner then the authorities who are the creature of statute cannot ignore the obligation.

Learned counsel in support of his arguments that the legislative intent of the proviso attached to Section 13 has to be given effect to

and the authorities acting thereunder cannot resile from their responsibility, has referred to the following judgments:

**(1) AIR 1962 SC 1543 (Madan Lal Vs. S. Chang
Deo Sugar Mills Ltd.)**

**(2) AIR 1992 SC 1846 (Administrator, Municipal
Corporation, Bilaspur Vs. Dattatraya Dahankar)**

Mr. Mangalam in support of the proposition that a statute has to be read as a whole and that there has to be a purposeful construction to the statutory provisions, referred to the following judgments:

**(a) (1979) 4 SCC 85 (Superintendent and
Remembrance of Legal Affairs Vs. Abani
Maitin)**

**(b) (b) (2003) 7 SCC 628 (Bal Ram Kumawat Vs.
Union)**

**(c) (c) 2016 (2) PLJR 253 (Vinay Kumar Pappu Vs.
State Election Commission)**

The argument of Mr. Mangalam has been responded to by Mr. Verma who while accepting to the stipulations present in the proviso submits that the stipulation is not mandatory. It is further the argument of Mr. Verma, learned Additional Advocate General that Sections 12 and 13 has to be read in conjunction and not in isolation.

It is the argument of Mr. Verma that while Section 12(2)(a) provides for division of a Municipal area into Territorial Constituencies which are also known as wards, the provision in Sub section (2) further provides for reservation which is to be applied on rational basis after two consecutive general elections.

It is the argument of Mr. Verma that the Katihar Municipal Corporation was constituted in 2009 and whereafter the election to the Corporation was held in 2010-2011 after dividing the Corporation in 45 Territorial Constituencies as per the table provided under Section 13 of 'the Act'. It is stated that the 2016 Election is the second Election hence there cannot be any change either in the classification of the constituency or in the number of wards. It is further the argument of Mr. Verma that the notification was issued on 28.3.2016 and the nomination process is to commence from tomorrow i.e. 17.05.2016. According to Mr. Verma the election is now practically at its final stage and it would be thus in the best interest of the people at large to allow the election to be held as per the schedule.

The argument of Mr. Verma has been seconded by Mr. Amit Srivastava appearing for the Commission and who has referred to the judgment reported in **AIR 1920 Privy Council 181** to submit that every word of statute has to be given its effect for the legislature wastes no words. He submits that even when the **proviso** to Section



13 does provide for determination of the number of Councillors in each election but the same has to be read alongside the stipulations present in Section 12(2)(a) of 'the Act'. Learned counsel has referred to the judgment of the Supreme Court since reported in **AIR 1959 SC 352 (I.T Commissioner Vs. Teja Singh)** to submit that law is well settled and a construction of a provision which would defeat the object of the legislation, should be avoided. It is the submission of Mr. Srivastava that if the argument of Mr. Mangalam is to be accepted then the stipulations present in Section 12(2)(a) of 'the Act' mandating a change in the classification of the territorial constituencies, every two years would be rendered **otiose**.

I have heard learned counsel for the parties and I have perused the records.

There is practically an agreement amongst the contesting parties that a statute has to be given a purposeful construction. At least on this proposition, the parties are not at logger heads. The difference of opinion between the contesting parties is that whereas as per Mr. Mangalam, the proviso attached to Section 13 is a mandatory exercise to be undertaken before every Municipal Election, on the other hand learned counsel appearing for the State and State Election Commission attach an explanation to the **proviso** on the intendment reflecting from the amended provisions of Section 12(2)(a) of 'the

Act'. It is thus to be seen whether the **proviso** to Section 13 carves out an exception to the stipulations present at Annexure-12(2)(a) of 'the Act' or both the provisions have to be read alongside or even if read independent of each other, the intendment remains the same.

For the purpose, I would be referring to some of the statutory provisions:

Section 12 of 'the Act' provides for constitution of municipality and Sub section (1) inter alia provides that a municipal area shall be divided in **territorial constituencies** known as '**wards**'.

Section 12(2)(a) of 'the Act' provides for reservation of seats in every municipality for the Scheduled Caste, Scheduled Tribe and Backward Classes. It further provides for classification of the seats to be allotted to each category by rotation under the supervisory control of the State Election Commission in the prescribed manner after 'two consecutive general elections'. The words '**two consecutive General Elections**' was incorporated vide **Amendment Act 8 of 2009**.

Section 13 deals with the composition of municipality and attaches a table providing for the minimum and maximum number of Councilors/wards as per the population of the municipalities at its Panchayat level, Council level as well as at the stage of the Corporation. The **proviso** attached to Section 13 requires the

Government to determine the number of Councillors for each municipality before every election.

The Bihar Municipal Election Rules, 2007 framed under 'the Act' at Chapter III provides for constitution, reservation and allotment of constituencies.

Rule 29 provides for constitution and numbering of the wards of the municipality as per the procedure laid down by the State Election Commission including the determination of seats.

Rule 30 further elaborates on the determination of seats for reservation of wards.

Rule 32 provides that the number of wards/municipalities to be reserved for different categories shall be determined in accordance with the procedure laid down by the State Election Commission.

Rule 34 thus provides for rotation of the wards amongst the categories.

Section 12 while providing for division of Municipal area in Territorial Constituencies/Wards, also in Sub section (2) provides for categorization of these constituencies under the supervisory control by the State Election Commission in the prescribed manner and which exercise has to be undertaken after every two consecutive general

elections. The determination of the number of wards again is under the exclusive control of the State Election Commission.

It is in the backdrop of the statutory provisions relevant for determination of the issue in contest as referred above that it has to be seen whether the proviso makes any departure there from. In my opinion, there is no such departure in the legal intendment of the proviso attached to Section 13 which while requiring the State Government to determine the councilors in each municipality before every election completely rests upon the exercise carried out under Section 12 of 'the Act' read alongside Rules 29,30,32,34 and 35 of 'the Rules'. It was rightly argued by Mr. Verma that the table attached to Section 13 merely provides the range of the minimum and maximum number of Councillors/Wards in a municipality. In fact while section 13 provides for a play area between minimum and the maximum number of Councillors depending upon a shift in population, the determination of the number of Councillors for each Municipality under the proviso attached to Section 13 is an exercise to be carried out by the State before every election. Thus the entitlement of a municipality for an additional Councillor and the determination of the number of Councillors in each election are two distinct exercise and independent of each other. While the first part of the provision is an enabling provision, the second part is an exercise which has to be



carried out in tune with the other prescriptions of the statute and it does not require an investigation to hold the determination of the number of Councillors has to be in consonance with the stipulations present in the amended provisions of Section 12(2) of 'the Act'. Thus even if by the enhancement in the population, the Corporation may have become entitled for an additional Councillor, its implementation has to be in tune with Section 12(2) of 'the Act' for otherwise the constitution of the wards and its classification would require an interference in the midst, thus overriding the amended provisions of Section 12(2) of 'the Act'.

The legal proposition advanced by Mr. Srivastava that the proviso has been attached to effectuate the provisions of 'the Act' and thus cannot be interpreted in a manner to render the provisions underlying Section 12(2) of 'the Act' itself nugatory, is sound on its principle. Even otherwise, all that the proviso to Section 13 provides is that the State Government shall determine the number of Councillors for each municipality before the every election by a notification. The proviso to Section 13 does not bear any stipulation that it has to be in tune with Section 13 rather even while the table attached to Section 13 provides for the manner of determination of the strength of each municipality to consist of such number of Councilors/Wards within the maximum limit provided in the table, the

discretion is left with the State Government to determine the same before every election. In so far as the present case is concerned that the State Government has decided to continue with the same number of Councillors/Wards as existing at the time of the 2010-2011 Municipal Election held to constitute the Corporation bearing in mind the stipulations present in Section 12(2) of ‘the Act’ which mandates following a pattern of classification of wards in two consecutive general elections, in my opinion, there is neither any arbitrariness in the action of the respondents nor it can be held to be in violation of the statutory provisions, requiring any interference.

The writ petition is dismissed accordingly.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	
CAV DATE	
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