

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4662 of 2017

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Atendra Kumar Singh, Son of Late Sri Baban Singh, Resident of Mohalla-Kabirganj, P.O. Sasaram, P.S. Sasaram Town, District- Rohtas at Sasaram, presently Ward Councilor from Ward No. 34 of Nagar Parishad, Sasaram, District-Rohtas at Sasaram.

.... 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 Director, Municipal Administration, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Rohtas at Sasaram, District- Rohtas at Sasaram.
5. The Executive Officer, Nagar Parishad, Sasaram, District- Rohtas at Sasaram.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate
For the State	:	Mr. Suresh Kumar, AC to GP 1
For the Nagar Parishad	:	Mr. Vijay Shankar Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 04-08-2017

Heard learned counsel for the petitioner, State and respondent no. 5.

2. The petitioner has moved the Court for the following reliefs:

“(I) For issuance of an appropriate writ in the



*nature of **MANDAMUS**, commanding and directing the Respondent Authorities to take suitable action against the Respondent no. 5 for dereliction of his duties as contemplated under Section 27B of the Bihar Municipal Act, 2007 as also for commission of financial irregularities by withdrawing money from the account of Municipality despite the decision of the Board dated 18.02.2017 by which the Board was pleased to seize all financial powers of the Executive Officer.*

(II) For a declaration that if the decision of the Board of a Municipality against an Executive officer is communicated to the department, the department is obliged to take disciplinary action against its Officers and if no action is taken by the department against the erring officers, it would be presumed that it is the intention of the State and its Authorities that the Municipal Government should not function as an unit of grass root democracy and, therefore, the action of the Authorities is against the wish of the constitution and the constitutional provisions.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”



3. At the very outset, learned counsel for the petitioner submitted that for all practical purposes, the application has become infructuous. However, he submitted that this is a common trend where the Executive Officer, though posted in the Nagar Parishad, does not consider the elected representative as having authority to run the Nagar Parishad and take decisions. It was submitted that at every level, besides showing disrespect by either not attending the meeting or in producing the relevant records/documents/files/registers before the elected representatives, especially during meetings even decisions taken are not implemented.

4. On a query to learned counsel for the State, he takes a categorical stand that once the State posts an officer, may be by deputation, to the Nagar Parishad, he is supposed to discharge his duties strictly in accordance with the Statute and to facilitate the functioning, working and implementation of the decisions taken by the Nagar Parishad.

5. Learned counsel for the respondent no. 5 submitted that he has acted in terms of the spirit of the Statute.

6. Though the Court is not satisfied with the stand taken by the respondent no. 5, but in view of the fact that for all practical purposes, the writ petition has become infructuous, the same stands disposed off.



7. Before parting with the order, the Court would only observe that in terms of the constitutional and statutory requirements, the Urban Local Bodies, including the Nagar Parishad, are autonomous Bodies and have complete control over their functioning and with regard to taking decisions independently. The Executive Officer is only a public servant deputed to the Nagar Parishad for the purposes of facilitating the functioning and execution of the decisions taken which has to be in terms of the requirement of law by completing certain formalities. The Executive Officer may point out to the Body of the Nagar Parishad with regard to his opinion relating to issues and decisions taken, but beyond that he does not have any other authority to interfere or impede, either in the decisions or its implementation. Such act may amount to insubordination making him open to disciplinary proceedings. The Court thus expects that the respondent no. 2 would sensitize such officers deputed to Urban Local Bodies not only to be loyal to the Body to which they have been deputed but also act as a facilitator towards implementation of the decisions of the concerned Urban Local Bodies by not only giving correct advise, but also ensuring that all legal formalities of which he is supposed to be aware of, are completed expeditiously and the decisions implemented. He shall also ensure that the officers so deputed are sensitized to respect the elected members and the Urban



Local Bodies which, should be reflected from his conduct, and that he is obliged to attend each and every meeting convened of the concerned Urban Local Bodies, along with all relevant records which may be required or called for.

8. Learned counsel for the State shall communicate the order to the respondent no. 2 for compliance and circulation to all of the officers deputed to the Urban Local Bodies in the State of Bihar.

9. The Court would indicate that it would also be the responsibility of the respondent no. 2 to ensure that if any deviant action by the officers deputed to the Urban Local Bodies is brought to his notice, he shall take prompt and firm action.

(Ahsanuddin Amanullah, J)

Anjani/-

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