

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18799 of 2016

Abha Lata, wife of Sri Ramesh Kumar, resident of Sherullahpur (Nandgaon), P.O. and P.S. Shastri Nagar, District Patna.

.... Petitioner

Versus

- 1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
- 2. The Principal Secretary, Cabinet Secretariat Department, Government of Bihar, Patna.
- 3. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.

... Respondents 1st Set.

- 4. The State Election Commission (Municipality) through the State Election Commission, Sone Bhawan, Birchand Patel Path, Patna.
- 5. The Secretary, the State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.

... .. Respondents 2nd Set.
.... Respondents

Appearance :

For the Petitioner : Mr. S.B.K. Manglam, Advocate
Mrs. Anita Kumari, Advocate

For the State : Mr. Kinkar Kumar, S.C. 9
Mr. Zakir Haider, A.C. to S.C. 9.

For the Respondent Nos. 4 & 5: M/S. Amit Srivastava and Sanjeev Nikesh, Advocates.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-01-2017

The challenge in the present writ application is to Bihar Municipal (Amendment) Act, 2016, whereby Bihar Municipal Act, 2007 was amended to insert proviso to Section 13. The proviso inserted



reads as under:-

“Provided that notwithstanding anything contained in any other provision of this Act, until the relevant figures for the census of the year 2021 are published, it shall not be necessary for the State Government to re-determine the number of wards on the basis of population of the municipal area ascertained at 2011 Census.”

Section 13 of Bihar Municipal Act, 2007 contemplates composition of municipality and the number of the members thereof. The first proviso as incorporated in the Act, contemplates that the State Government shall determine the number of Councillors for each municipality before every election, by notification. The effect of the impugned amendment is that until such time, the figures of census for the year 2021 are published, it shall not be necessary for the State Government to re-determine the number of Wards on the basis of population in the Municipal area ascertained in 2011 Census.

We have heard learned Counsels for the parties and find no merit in the present writ application.

The argument of learned counsel for the petitioner is that Part IXA of the Constitution has specified the mode of conduct of elections, i.e. the number of wards will be determined on the basis of population as ascertained at the last census. It is argued that such provisions are contained in Article 243T read with Article 243P (g) of Part IX A of the Constitution. It is, thus, contended that since the Amending Act does away with the criteria so contemplated by the



Constitution, therefore, it cannot be sustained it being contrary to the Constitution.

Entry -5 of List II of the Seventh Schedule of the Constitution is “Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration”. Therefore, it is the State Legislature which is competent to legislate in respect of constitution of the local bodies. It is also provided under Article 243ZF of the Constitution that any provision of law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from which commencement, whichever is earlier. Therefore, the Constitution has recognized that the competent Legislature is the State Legislature and that provisions of Part IXA will be applicable only after the period of one year, if there is no provision enacted in the meantime.

Parts IX and IX-A of the Constitution, relating to Panchayats and Municipalities were inserted by the Constitution (Seventy-third Amendment) Act, 1992 and Constitution (Seventy-fourth Amendment) Act, 1992. Parts IX and IX-A came into force on



24-4-1993 and 1-6-1993 respectively. The object of Part IX was to introduce the Panchayat system at grass root level. As Panchayat systems were based on State legislations and their functioning was unsatisfactory, the amendment to the Constitution sought to strengthen the Panchayat system by giving a uniform constitutional base so that the Panchayats become vibrant units of administration in the rural area by establishing strong, effective and democratic local administration so that there can be rapid implementation of rural development programmes. The object of Part IX as stated in the Statement of Objects and Reasons is extracted below:

“In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

2. Having regard to these inadequacies, it is considered necessary that provisions relating to urban local bodies are incorporated in the Constitution particularly for—

- (i) putting on a firmer footing the relationship between the State Government and the urban local bodies with respect to—
 - (a) the functions and taxation powers; and
 - (b) arrangements for revenue sharing;
- (ii) ensuring regular conduct of elections;
- (iii) ensuring timely elections in the case of supersession; and
- (iv) providing adequate representation for the weaker sections like Scheduled Castes, Scheduled Tribes and women.”



Keeping in view the objects and reasons of insertion of Parts IX and IXA, the Bihar Municipal Act, 2007 was enacted. Therefore, it is the State Legislature which is competent to determine as to when the wards of Municipal Council would be changed.

The Election to a Municipality is a statutory right. Such statutory right can be varied and modified by the competent State Legislature. In Jyoti Basu v. Debi Ghosal, (1982) 1 SCC 691, the Hon'ble Supreme Court said to the following effect:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down.....”

Recently, in Rajbala v. State of Haryana, (2016) 2 SCC 445, the Court held as follows:-

28. Again in *Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467: (2015) 2 SCC (Cri) 359*, this Court observed that the right to contest an election is a plain and simple statutory right.



40. The next question is — whether such constitutional rights exist in the context of elections to the panchayats? Having regard to the scheme of Part IX of the Constitution, the purpose for which Part IX came to be introduced in the Constitution by way of an amendment, we do not see any reason to take a different view.

41. On the other hand, this Court in *Javed v. State of Haryana* (2003) 8 SCC 369, held that: (SCC p. 384, para 22)

“22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in panchayat may be said to be a constitutional right....”

44. It appears from the above that any person who is disqualified by or under any law for the time being in force for the purposes of elections to the legislatures of the State concerned is also disqualified for being a member of panchayat. In other words *qualifications* and *disqualifications* relevant for membership of the legislature are equally made applicable by reference to the membership of panchayats. Though such *qualifications* and *disqualifications* could be stipulated only by Parliament with respect to the membership of the legislature of a State, Article 243-F authorises the State Legislature concerned also to stipulate disqualifications for being a member of panchayat.

45. The *right to vote* at and *right to contest* an election to a panchayat are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Both the rights can be regulated/curtailed by the appropriate legislature directly. Parliament can indirectly curtail only the *right to contest* by prescribing *disqualifications* for membership of the legislature of a State.”

In view of the above, we do not find any illegality in the amendment carried out by Bihar Municipal (Amendment) Act, 2016



whereby existing composition of Municipality is contemplated not to be altered till consensus of 2021 are published.

We do not find any merit in the writ application. Consequently, the same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Sunil

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.01.2017
Transmission Date	

