

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.500 of 2018

in
C.W.J.C. No.13909 of 2017

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1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Patna.
 2. The Additional Secretary, Panchayati Raj Department, Bihar, Patna.
 3. The Director, Panchayati Raj Department, Bihar, Patna.
 4. The District Magistrate, Nawada.
 5. Zila Parishad Nawada through it's Chief Executive Officer.
 6. The D.D.C.-cum-the Chief Executive Officer, Zila Parishad, Nawada.

... .. Appellant/s

Versus

1. Bina Devi, wife of Sri Vinay Kumar Singh, Resident of Village & P.O.- Samai, P.S.- Mufassil, District- Nawada.
2. Saroj Devi, Wife of Sri Rabindra Yadav, Resident of Village- Gopalpur, P.S.- Rajauli, District- Nawada.
3. Priti Kumari, Wife of Laxman Kumar Chouhan, Resident of Village- Beldari Pachamba, Prakhand/P.S.- Sirdala, District- Nawada.
4. Premchand Kumar, Son of Sri Jehal Prasad, Resident of Village- Dhodhra, P.O. & P.S.- Meskaur, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay, GA-5 Mr. Pratik Kr. Sinha, AC to GA-5
For the Respondent/s	:	None

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 07-02-2019

Re: I.A. No.2837 of 2018

Heard Shri Ajay, learned counsel for the State of Bihar.

The appeal is reported to be delayed by 129 days.

We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be



within time.

I.A. No.2837 of 2018 stands allowed accordingly.

Re: L.P.A. No.500 of 2018

This appeal questions the correctness of the impugned judgment dated 01.11.2017 passed in C.W.J.C. No.13909 of 2017 relating to the participation of non-elected Members of the Zila Parishad in the Standing Committees of the Zila Parishad.

The contention of the learned counsel for the appellants is that the provisions of the Bihar Panchayat Raj Act, 2006, if read as a whole, would clarify the intention of the Legislature so as to define the scope and ambit of the participation of non-elected Members in relation to the election of the Members of the Standing Committee.

We do not have to labour in this matter so as to cull out the reasoning inasmuch as the learned single Judge from Paragraph 13 onwards in the impugned judgment has arrived at a conclusion after careful analysis that the rights of the Members of the Zila Parishad are available to all the categories which constitute the Zila Parishad as defined under Section 63(2) of the 2006 Act, which is further clarified by an express declaration that the bar of participation is restricted as categorically provided for in Section 63(1)(b)(c) and (d) of the Act.

The present is a dispute not with regard to the aforesaid categories but for constituting the Standing Committee. The executive instruction dated 27 July, 2017, therefore, cannot fill in a gap so as to override the express provisions of the Statute.

We are, therefore, of the considered opinion that keeping in view the provisions of Sections 63(2), 77 and 79 of



the 2006 Act, the conclusion drawn by the learned single Judge does not suffer from any error; much less a legal error, so as to take a different view in the matter.

In case the Government intends to deprive or otherwise restrict the status of participation of non-elected Members in respect of local body like a Zila Parishad, then in that event, in our opinion, the same can be done only by a proper legislation and not through a clarificatory executive instruction as it relates to the functioning of a local body, which has a constitutional status under Part IX of the Constitution of India.

The Letters Patent Appeal is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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