

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11144 of 2021

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1. Shyam Kumar Son of Dwarika Paswan, Resident of Village-Chhotki Ahiyapur, Police Station-Arwal, District-Arwal.
 2. Ramakant Kumar, Son of Tribhuwan Sharma, Resident of Village-Chhotki Ahiyapur, Police Station-Arwal, District-Arwal.

... .. Petitioners

Versus

1. The State of Bihar Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Urban Development and Awas Department, Government of Bihar, Patna.
4. The State Election Commission, Bihar through its Secretary, Birchand Patel Path, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar with
	:	Mr.Birendra Kumar
For the Respondent/s	:	Mr.Sanjeev Nikesh
	:	Mr.Amit Srivastava
	:	Mr.Girish Pandey
	:	Mr.Y.P. Sinha (AAG 7)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 15-07-2021 This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard Mr. Sanjay Kumar, learned counsel for the petitioner, Mr. Amit Srivastava, learned counsel for the State Election Commission, Bihar and Mr. Y.P. Sinha, learned counsel for State respondents no. 1, 2 and 3.

3. The petitioners claim to be elected Ward Councillors of Nagar Parishad, Arwal in the District of Arwal on



the basis of General Election which was held in 2016. Indisputably, the Nagar Parishad is a Municipality within the meaning of Section 2(66) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'). Section 12(5) of the Act stipulates that a Municipality shall, unless dissolved earlier, continue for a period of five years from the date of its first meeting after the General Election, no longer. It is not in dispute that the term of the office bearers of the Nagar Parishad expired in the month of May, 2021.

4. Visibly because of extraordinary COVID-19 pandemic situation, the General Election of the Nagar Parishad could not be held before the expiry of period of five years. Sub Section 9 of Section 12 prescribes the consequence of non-holding of election before expiry of the period of five years and provides for the arrangement to be made in such circumstance. Section 12(9) of the Act reads thus:-

“12(9) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in sub-section (5), the Municipality shall stand dissolved on the expiration of the said period, and all the powers and functions vested in the municipal authorities under this Act or under any other law for the



time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint.”

5. By filing present writ application under Article 226 of the Constitution of India, the petitioners are seeking a direction for issuance of a direction to the respondents to issue an order/notification for constitution of an Advisory Committee of the Nagar Parishad, as has been done in Gram Panchayat, Panchayat Samiti and Zila Parishad by virtue of amendment in Bihar Panchayat Raj Act, 2006 for proper functioning of the Nagar Parishad.

Mr. Sanjay Kumar, learned counsel appearing on behalf of the petitioner has submitted that in the case of Nagar Parishad, Arwal, an Administrator has been appointed in accordance with Section 12(9) of the Act whereas it would have been appropriate if an Advisory Committee was constituted in the similar manner, as has been done in case of Gram Panchayats and Zila Parishad by introducing amendment in the Act. He has submitted that treating Municipality differently from that of Gram Panchayat is violative of Article 14 of the



Constitution of India.

In my opinion, the writ petition is wholly misconceived and devoid of any merit. The statutory prescription under Sub-Section 9 of Section 12 clearly confers on the State Government, a power to designate a person as an Administrator or Board of Administrators in the event General Election of Municipality is not held before the expiry of period of five years. There being no ambiguity in the language of Section 12(9) of the Act, the petitioners' prayer is not tenable at all. The submission that a direction should be issued to the respondents-State of Bihar to make provision in the Municipal Act, similar to one introduced in Panchayat Raj Act, exercising of power of judicial review is wholly misconceived. This Court exercising power of judicial review cannot issue such direction.

For the aforesaid reasons, this application is dismissed.

(Chakradhari Sharan Singh, J)

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