IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15590 of 2021

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1. Vinay Kumar Son of Late Surendra Nath Roy Yadav, Resident of Station Road, Goriyatoli, P.S.- Kotwali, District- Patna.
2. Aakash Gaurav, Son of Uday Kumar, Resident of Station Road, Goriyatoli, P.S.- Kotwali, District- Patna.
3. Kiran Devi Wife of Uday Kumar, Resident of Station Road, Goriyatoli, P.S.- Kotwali, District- Patna.
4. Samar Ghosh, Son of Late Ajit Kumar Ghosh, Resident of Ajit Arcade, R.K. Bhattacharya Road, P.S. Gandhi Maidan, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Patna Municipal Corporation through its Municipal Commissioner, Maurya Lok Complex, P.S.- Kotwali, District- Patna.
4. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, P.S.- Kotwali, District- Patna.
5. The City Secretary, Patna Municipal Corporation, Maurya Lok Complex, P.S.- Kotwali, District- Patna.
6. The Sparro Softech Private Limited, through its Project Manager, Alok Kumar Tiwari, Resident- 101-102 first floor Udyawan Bhawan, A.N. College, Opposite Boring Road, P.S.- S.K. Puri, District- Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dinu Kumar, Advocate
For the Respondent/s	:	Mr. I.P. Mandal, AC to GA-3
For the PMC	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

20 24-07-2024 Heard Mr. Dinu Kumar, learned counsel for the petitioner and Mr. Prasoon Sinha, representing the Patna Municipal Corporation as also Mr. Indeshwari Pd. Mandal, learned AC to GA-3.

2. The petitioner has prayed for grant of the

following reliefs:

(i) for issuance of writ/order/ direction including writ in the 08046 nature of certiorari quashing the Letter No. 0846 dated 23.06.2021 issued by Municipal Corporation Patna as contained in Annexure- 5 by which the Respondent Corporation has issued fresh rates for Solid Waste Management which is to be paid by the different categories of persons including the petitioners without making any rule and regulation as per Section 421, 422, 423 of the Bihar Municipal Act after publishing in Gazette;

(ii) for issuance of writ/order/ direction including writ in the nature of certiorari for quashing the Letter No. 11429 dated 28.09.2020 by which the respondent corporation after amalgamating the Solid Waste

Management Fee with Holding Tax authorized Respondent No. 6 to collect the same from the citizens as the same is in contravention to the Bihar Municipal Act as well as Solid Waste Management Rules, 2016;

(iii) for issuance of writ/order/ direction including writ in the nature of certiorari for quashing the Resolution No. 13 passed in Meeting No. 42 of the Empowered Standing Committee of the Respondent Corporation dated 16.06.2020by which the proposal for collection of solid waste user charge with property holding tax at a revised rate by amalgamating both was approved;

(iv) for issuance of writ/order/ direction including writ in the nature of mandamus commanding the respondents to produce the

resolutions dated 16.06.2020 and 05.06.2021 of the Empowered Standing Committee of the Respondent Corporation and upon production the same may be quashed as being in violation of provisions contained in Bihar Municipal Act and the Solid Waste Management Rules, 2016;

(v) for issuance of writ/order/ direction including writ in the nature of mandamus commanding the respondents to refund. the excess Solid Waste Management fee charged from the petitioners;

(vi) for issuance of writ, order, direction including writ in the nature of mandamus commanding the respondents to restore the earlier position with regard to collection of charges for Solid Waste Management as defined in Bihar

Municipal Act,2007 hereinafter referred as Act, 2007 read with Solid Waste Management Rule, 2016 hereinafter referred as Rule, 2016;

(vii) any other relief/reliefs for which the petitioner is found entitled to on the facts and in the circumstances in the instant case.

3. From 28.06.2023, 19.07.2023 and 07.08.2023, when order nos. 8, 9 and 10 respectively were passed by this Court, the matter came full circle, when on 08.07.2024, the matter again came up before the Court.

4. On 19.06.2024, a coordinate bench passed the following order:

"Heard learned counsel for the petitioner, learned counsel appearing on behalf of Patna Municipal Corporation as well as learned counsel appearing on behalf of the State.

As prayed on behalf of the State, put up this case on 08.07.2024 enabling *him to file a detailed counter affidavit annexing the gazette notification which was supposed to be published in pursuant to the letter dated 06.03.2019".*

5. As this was not complied, on 08.07.2024, the subsequent order was passed by this Court which is as follows:

"Heard the parties.

2. Learned counsel for the State submits that despite the order dated 19.06.2024, the statement of facts has not arrived.

3. Let the State respondent file counter affidavit and comply the order dated 19.06.2024, failing which a cost of Rs. 10,000/- (ten thousand only) be deposited in the Patna High Court Legal Services Committee.

4. List this case after two weeks".

6. Pursuant thereto, the 7th supplementary counter affidavit has been filed on behalf of respondent no. 2 and Annexure-C would show that the gazette notification has been

published on 20.06.2024 vide no.13/न0वि0स्व0नि0/अ0प्र0–05/2024–1887/न0वि0एवं आ0 वि0.

7. Mr. Dinu Kumar, learned counsel for the petitioner has taken this Court to the earlier notification of the Urban Development and Housing Department, Bihar, Patna vide no. 697 dated 6.3.2019 to show that the State Government had clarified that once all the Municipal Authorities adopt the Waste Management (Model) Sub-Rule 2019, the same will be published in official gazette. He submits that when the gazette notification has taken place on 20.06.2024, the amount that was/were charged/realised from the citizen of the capital city of Patna from 2018 has to be adjusted.

8. Mr. Prasoon Sinha, learned counsel appearing on behalf of Patna Municipal Corporation (henceforth 'for Corporation') has taken this Court to the notification dated 18.07.2013 issued by the State Government to submit that it was actually notified by the State Government pursuant to the decision taken by 'the Corporation' and as such the authorities are not obliged to adjust the amount which was/were charged/realized effective 2018.

9. Mr. Dinu Kumar, learned counsel for the petitioner counters the same and submits that if this logic of the learned

counsel for 'the Corporation' is accepted, they are duty bound to answer that when the gazette notification took place in the year 2013, why they waited for five years before starting charging/realising the amount from the citizen thus suffering financial loss. He submits that actually they could not have charged till a proper notification is issued by 'the Department' and it was due to said reason, they earlier delayed realization but from 2018 realisation without the gazette notification of State, started.

10. There is nothing on record/reply to answer to the said submission put forward by the learned counsel for the petitioner.

11. In that background, this Court also feels that when the gazette notification has become effective 20.6.2024; the respondents have to answer on the point as to whether 'the Corporation' is duty bound to adjust the amount charged/realised from 2018 onwards to the citizen earlier or not.

12. The respondent no.2, the Principal Secretary, Urban Development and Housing Department, Bihar, Patna shall specifically answer on:

(i) whether the Patna Municipal

Corporation is entitled to the charge the fee effective 20.06.2024, when the gazette notification came and is thus duty bound to adjust the amount so taken from the citizen earlier and/or;

(ii) the stand of the Patna Municipal Corporation that the charge which they started realizing effective from 2018 is justified.

13. The respondent no.2 if required can give hearing to both the petitioner/his counsel as well as the officials of 'the Corporation' whereafter shall come to a conclusion and pass a reasoned order on the subject matter. The decision has to be taken within three months of the presentation of a copy of the order.

14. The writ petition is disposed of with the aforesaid observation

(Rajiv Roy, J)

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