

(2012) 08 PAT CK 0097

Patna High Court

Case No: CWJC No. 2739 of 2010

Sanjay Kumar Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 16, 2012

Acts Referred:

- Bihar Municipal Act, 2007 - Section 100, 12, 166, 45, 45(1)(a)(vi)
- Constitution of India, 1950 - Article 243B, 243D, 243G, 243P(d), 243Q

Citation: (2013) 2 PLJR 291

Hon'ble Judges: Samarendra Pratap Singh, J

Bench: Single Bench

Advocate: Ashok Kr. Sinha, Anupa Nand Jha and Santosh Kumar Singh, for the Appellant; Rakesh Kumar Ranjan for the State and Mr. Nikesh Kumar for the Nagar Panchayat, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Samarendra Pratap Singh, J.

The petitioner who is the Vice-Chairman, Nagar Panchayat (Jhajha), Jamui seeks mandamus commanding the respondents to transfer the power of settlement of Bus Stand, Taxi Stand from Zila Parishad, Jamui to Nagar Panchayat, Jhajha in view of Article 243-W read with Schedule Twelfth, Item No. 17 of the Constitution read with Section 11A, Item No. XVIII of Bihar and Orissa Municipal Act, 1922. A direction has also been sought to allow the Nagar Panchayat (Jhajha), Jamui to make settlement of bus-stand and collection of toll. It is relevant to state at this juncture that Bihar and Orissa Municipal Act, 1922 has been repealed and replaced by Bihar Motor Vehicles Act, 2007 (sic--Bihar Municipal Act, 2007) and the relevant provision in the context is Section 45(a)(vi) of the Bihar Motor Vehicles Act, 2007 (sic--Bihar Municipal Act, 2007).

2. Shorn of details, the facts of the case in brief is that in the year 2000, the Deputy Commissioner-cum-Secretary, Regional Transport Authority, Munger granted approval for establishing a bus stand at Jhajha under Rule 191 of Motor Vehicles Rules, 1992 on Plot No. 102, Khata No. 88 measuring an area of 1.85 acres in its communication dated 10.1.2000 addressed to the District Officer, Jamui. The plot and the land belonged to Zila Parishad. As the approval to set up bus stand was granted on land which belonged to the Zila Parishad, the latter seemingly has been of the view that it alone would have right to run the Bus/Taxi-Maxi stand. In the year 2005, the Nagar Panchayat opposed settlement of the bus stand by Zila Parishad, which was rejected vide memo no. 281 dated 25.4.2005 by the District Officer, Jamui. Since then the Zila Parishad is settling the bus stand which admittedly is within territorial limits of Nagar Panchayat.

3. The Nagar Parishad again made objections vide letter no. 106 dated 8.4.2008 and requested the District Officer, Jamui to settle the dispute of bus stand and collection of toll as the site approved by Transport Authority was within its territorial limit. The District Officer vide his letter dated 23.3.2009 referred the matter of settlement of bus stand to the Principal Secretary, Urban Development and Housing Department, Bihar, Patna on 23.3.2009. The District Officer stated in its letter that Agar Panchayat is making claim that it alone would have right to run bus stand within its area and as such the settlement of bus stand be transferred to it. The District Officer thus sought guidance of the Government, the Department of Urban Development Department on the matter. The Principal Secretary, Revenue and Land Reform Department, Government of Bihar in his letter dated 28.8.2008 addressed to all the Collectors asked them to ensure transfer of bus/taxi stand, ferry services existing in urban areas to urban bodies in terms of Departmental Resolution No. 613(9)RA, dated 7.7.2006. But there was no response from the Urban Development Department. The Zila Parishad, Jamui as usual continued to settle the bus stand on its land and vide memo no I 17/Zi.P dated 24.2.2009 also started process of settlement of bus stand for the year 2010-11.

4. This Court vide order dated 23.3.2010 restrained the District Board from taking steps for settlement of bus stand in favour of an individual or otherwise. A common counter affidavit was filed on behalf Zila Parishad as well as Chief Executive Officer, Zila Parishad, respondent nos. 6 and 7. They contended that Nagar Parishad would have no right to settle or run bus stand on the land of Zila Parishad irrespective of the fact whether the land existed in the territorial limits of Nagar Panchayat (Municipality). They submit that the Regional Transport Authority has approved establishment of bus stand on land of Zila Parishad and as such it would have right to settle and run the bus stand. They state that even in view of Section 100 of the Bihar Municipal Act, 2007, the land belonging to Zila Parishad would not vest with the Municipality though within the limits of Municipal area. Section 100 of the Bihar Municipal Act, 2007 reads as under:--

100. Vesting of property.--Notwithstanding anything contained in any other law for the time being in force, the movable and the immovable properties of the following categories within the limits of a municipal area, not belonging to any Government department or statutory body (excluding Zila Parishad or corporation), shall vest in the Municipality, unless the State Government directs otherwise by notification, namely:--

(a) all public lands not belonging to any Government department or statutory body or corporation,

(b) all public tanks, streams, reservoirs, and wells,

(c) all public markets and slaughter-houses,

(d) all public sewers and drains, channels, tunnels, culverts and watercourses in, alongside, or under, any street,

(e) all public street and pavements, and stones and other materials thereon, and also trees on such public streets or pavements not belonging to any private individual,

(f) all public parks and gardens, including squares and public open spaces,

(g) all public ghats on rivers or streams or tanks,

(h) all public lamps, lamp-posts and apparatus connected therewith, or appertaining thereto,

(i) all public places for disposal of the dead, excluding those governed by any specific law in this behalf,

(j) all solid wastes collected on a public street or public place, including dead animals and birds, and

(k) all stray animals not belonging to any private person

5. The respondents state that in past a dispute arose between Zila Parishad and Nagar Panchayat over right to construct and settle shops on the land of Zila Parishad within Municipal area and the matter travelled to this Court in C.W.J.C. No. 13829 of 2005. A learned single Judge in its order dated 13.7.2006 while upholding the claim of Zila Parishad to construct and settle shops standing on its land, observed as follows:--

It is held that the lands belonging to and standing in the name of Zila Parishad area the lands of the Zila Parishad irrespective of the fact as to where it is situated and the Zila Parishad has full right, title and interest thereon.

6. In another instance, the Chief Secretary, Bihar, vide his order dated 20.7.2006, (Annexure-D to counter affidavit), consequent to remand of dispute by this Court in C.W.J.C. No. 4444 of 2005, observed that Zila Parishads are entitled to hold

properties over its land and has right to settle the shop existing on its land.

7. On these reasonings, the respondent Zila Parishad claims that it would have right to settle and run bus stand on its land consequent to approval of competent Transport Authority irrespective of the fact whether the land is within or beyond the Municipal area.

8. On the other hand, learned counsel for the petitioner submits that in view of constitutional mandate contained in Article 243-W read with 12th Schedule, it alone would have right to settle and run bus-stands or manage bus stops on land approved by Transport Authority, within its territorial limit. The order of this Court in C.W.J.C. No. 13829 of 2005 holding that Zila Parishad has right to construct and settle shop on its land would not be of much help, as the issue herein is different and relates to running and settlement of bus stand which is covered under constitutional scheme. The petitioner submits that for the same reasons the decision of the Chief Secretary dated 25.7.2006 contained in Annexure-D to the counter affidavit wherein it was also decided that Zila Parishad would have right to construct and settle shops on its land would also be of no relevance. The petitioner states that rather the decision of the Principal Secretary, Department of Revenue and Land Reforms dated 28.8.2008 (Annexure-3) would govern the field as it directly covers the issue of settlement of taxi-maxi stand and ferry services in urban areas. The Principal Secretary directed the District Magistrates to ensure transfer of settlement of taxi-maxi stand to urban bodies which is Municipality.

9. The petitioner has also placed reliance upon a judgment in the case of [Mahnar Nagar Panchayat and Others Vs. State of Bihar and Others](#), .

10. Before I take up the rival submissions for consideration, it would be apt to notice the relevant provisions and laws governing the subject. Part-IX and Part-IXA introduced vide Constitution by 73rd and 74th Constitutional Amendment, 1992 marks a significant step forward in local self-governance at grass-root levels, both in respect of rural and urban areas. Part IX deals with Panchayat and Part IXA deals with Municipality. Both the institutions are now constitutionally established and recognized system of local self-government. Both of them have three tier system of governance. Panchayats deal with rural areas and Municipalities are constituted for urban areas where there is pre-dominance of non-agricultural activities. Nagar Panchayat is a Municipality within the meaning of Article 243Q-Q(1)(a) of the Constitution of India read with Section 12 of the Bihar Municipal Act, 2007. It is one of the forms of urban self-government comprising of smaller areas. Article 243-Q is quoted hereinbelow:--

243-Q. Constitution of Municipalities.--(1) There shall be constituted in every State,--

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, "specify to be an industrial township.

(2) In this article, ""a transitional are "a". "a smaller urban area" or "a larger urban area" means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.

11. Article 243-P(d) of the Constitution and Section 6 of the Bihar Municipal Act, 2007 defines "Municipal area" to mean territorial area of Municipality, as is notified by the Governor.

12. Article 243-W of the Constitution deals with powers, authority and responsibilities of Municipalities and 12th Schedule of the Constitution earmarks the area and spheres over which the Municipality would exercise their authority and jurisdiction. "The function enumerated in Schedule 12 of Constitution is fully incorporated in Sections 45 and 47 of the Municipal Act, 2007. Article 243-W of the Constitution and Section 45 of the Bihar Municipal Act, 2007 are quoted hereinbelow:--

243-W. Powers, authority and responsibilities of Municipalities, etc.--Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to--

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

45. Core Municipal Functions.--(1) Every Municipality shall--

(a) provide on its own or arrange to provide through any agency the following core municipal services:--

(i) water-supply for domestic, industrial. And commercial purposes,

(ii) drainage and sewerage,

(iii) solid waste management,

(iv) preparation of plans for development and social justice, (Slum up-gradation and provision of basic service in the urban proof),

(v) Communication systems, construction and maintenance of roads, footpaths, pedestrian pathways, transportation terminals, both for passengers and goods, bridges, overbridges, subways, ferries, and inland water transport system,

(vi) transport system accessories including traffic engineering schemes, street furniture, street lighting, parking areas and bus stops,

(vii) community health and protection of environment including planting and caring of trees on road sides and elsewhere

(viii) markets and slaughterhouses,

(ix) promotion of educational, sports and cultural activities, and

(x) aesthetic environment, and

(b) perform such other statutory or regulatory functions as may be provided by or under this Act or under any other law for the time being in force.

(2) The Municipality may, having regard to its managerial, technical, financial and organizational capacity, and the actual conditions obtaining in the municipal area, decide not to take up, or postpone, the performance of, any of the functions as aforesaid.

(3) The State Government may direct a Municipality to perform any of the functions as aforesaid, if such function is not taken up, or is postponed, by the Municipality.

(4) The Municipality may plan, build, operate, maintain or manage the infrastructure required for the discharge of any of the functions, as aforesaid, either by itself or by any agency under any concession agreement referred to in Section 166.

13. One of the core functions of Municipality u/s 45(1)(a)(vi) of the Bihar Municipal Act, 2007 is to arrange and provide parking areas and bus stops. The same function is also recognized by Constitution in its 12th Schedule vide item no. 17.

14. Section 99 of the Bihar Municipal Act, 2007 vests power in Municipality to acquire and hold property whether within or outside the limit of Municipal area.

15. Similarly, the Panchayat is constituted under Article 243-B of Constitution read with Section 11 of the Gram Panchayat Act. Article 243-B of the Constitution is quoted hereinbelow:--

243B Constitution of Panchayats.--(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

16. It would appear from Article 243-B of the Constitution that Panchayats too have three tier local system of governance. The Panchayat established at district levels is known as Zila Parishad and has more areas than the Panchayats at village or intermediate level.

17. Section 2(x) of the Bihar Panchayat Raj Act defines area of Panchayat. Article 243-G of the Constitution enumerates the powers, authority and responsibilities of Panchayats. The functions and responsibilities assigned to a Panchayat is mentioned in Eleventh Schedule to the Constitution of India.

18. Section 73 of the Bihar Panchayat Raj Act too defines functions and powers of Zila Parishad. Section 80 of the Bihar Panchayat Raj Act vests right to Panchayat to hold and acquire property.

19. It is relevant to state herein that neither the Constitution nor the Panchayat Raj Act assign functions of providing public amenities like bus stops, halting and parking zone or public conveyances to Zila Parishad. The power to approve a site for running bus stands or providing halting and parking place is conferred on Transport Authority. In this context, Section 117 of the Motor Vehicles Act and Rule 191 of the Motor Vehicles Rules, 1992 are quoted hereinbelow:--

117. Parking places and halting stations.--The State Government or any authority authorized in this behalf by the State Government may in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers.

191. Parking places and halting stations.--(1) In consultation with local authorities having jurisdiction in the area concerned and in the city where there is Commissioner of Police, in consultation with such Commissioner of Police and elsewhere, with the District Magistrate, the Regional Transport Authority may, by notification in the Official Gazette or by the erection of traffic signs which are permitted for the purpose, under sub-section (1) of Section 116, or both, in respect of picking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicle:--

(i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or class, or

(ii) require that within the limits of any municipal corporation, municipality, notified area or cantonment, or within such other limits as may be specified in the notification, certain, specified stands or halting places only shall be used:

Provided that no place which is privately owned shall be so notified except with the previous consent in writing of the owner thereof.

(2) Whether a place has been notified or has been demarcated by traffic signs, or both, as being a stand or halting place for the purpose of this rule, then notwithstanding that the land is in possession of any person, the place shall, subject to the provisions of these rules, be deemed to be a public place within the meaning of the Act; and the Regional Transport Authority may enter into an agreement with, or grant a licence to any person for the provision or maintenance of such place including the provision or maintenance of the buildings or works necessary thereto, subject to the termination of the agreement or licence forthwith upon the breach of any condition thereof and may otherwise make rules or give directions for the conduct of such place including rules or directions--

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) xx xx xx xx

(iv) xx xx xx xx

(v) xx xx xx xx

(vi) xx xx xx xx

20. The issue for consideration before this Court is whether the Zila Parishad would have absolute right to settle bus stand/taxi-maxi stand on its land, but falling within territorial limits of a Municipality.

21. In the instant case the Regional Transport Authority, Munger has approved setting of a bus stand on a piece of land appertaining to Khata No. 88, plot no. 102 which belongs to Zila Parishad. The petitioner has alleged that Zila Parishad is running a bus stand on plot no. 1176 and not on plot no. 103 of Khata No. 88. The allegation has been disputed by the respondent Zila Parishad. In view of the issue involved in this case, I would not delve into the dispute and proceed for the time being on assumption that Zila Parishad was running bus stand on the site approved by the Transport Authority.

22. Section 117 of the Motor Vehicles Act confers power on the State Government or the authority authorized by it to determine places at which motor vehicle may stand either indefinitely or for a specified period of time, and may determine the places at

which public service vehicles may stop for a longer time than is necessary for taking up and setting down of the passengers. The aforesaid decision is to be taken in consultation with the local authority having jurisdiction over the area.

23. It would appear from Rule 191 of the Bihar Motor Vehicles Rules, 1992 that the Regional Transport Authority has been vested with jurisdiction to determine the site for specified stands or halting places for picking up or setting down of passengers in consultation with local authority having jurisdiction in the area save and except in the city where consultation with Commissioner of Police or the District Magistrate as the case may be would be necessary. Thus the right to determine the site for bus stand or the parking zone and halting zone is vested with the Regional Transport authority in consultation with local Authority and the District Magistrate/Police Commissioner where ever it is applicable as provided in Section 117 of the Motor Vehicles Act read with Rule 191 of the 1992 Rules.

24. Article 243-W (a)(ii) vests power with the Municipality to perform functions and implement the schemes as may be entrusted to them including those in relation to matters listed in the Twelfth Schedule. Item No. 17 of Twelfth Schedule refers to public amenities including street lighting, parking lots, bus stops and public conveniences. Section 45(1)(vi) of Bihar Municipal Act also confers similar power to Municipalities. The power, function and responsibility of Panchayats including Zila Parishad are enumerated in Article 243-G of the Constitution read with Eleventh Schedule. Section 73 of the Bihar Panchayat Raj Act, 2006 elaborates the functions and powers of Zila Parishad. It is significant to note that neither Constitution nor the Panchayat Raj Act, 2006 bestow power of settling and running a bus stand or managing a bus stop to a Zila Parishad or any other constituents of a Panchayat.

25. As per Article 243-D of the Constitution and Section 6 of the Bihar Municipal Act, 2007, the Municipal Area would mean territorial area of a Municipality as notified by the Governor of the State. Both plot no. 1176 as well as plot no. 103 of Khata No. 88 fall within the territorial limits of Municipality. The Nagar Panchayat in view of constitutional mandate would have a right to settle and run a bus stand within its territorial area in preference to right of any other local body, entity or individual. Merely because the land for settlement of bus stand approved by Transport Authority is of Zila Parishad, would not give the latter a right to right to run or manage bus stand, if Municipality questions such right and make a claim. At the best, the Zila Parishad may refuse to permit the Municipality to settle and run a bus stand on its land. In such circumstances, the Municipality may have again to request the Regional Transport Authority to determine any other site for settlement and running of a bus stand or managing bus stops. In case the Municipality does not have any land on its own, it can take land of others on lease for the purpose, subject to approval of the Regional Transport Authority. A Zila Parishad can use its land for the purposes of repair or cleaning of its own vehicle but cannot use the premises for picking up or setting down passengers, if there is objection from Municipality.

26. Furthermore Section 488(2) of the Bihar Municipal Act, 2007 states that Gram Panchayats, Panchayat Samities and Zila Parishads constituted under the Bihar Panchayat Raj Act, 2006, whose jurisdiction extends over the Municipal Area shall not exercise powers and functions as have been entrusted to the Municipality under the Act. Section 488(1) and (2) are quoted hereinbelow for easy reference:--

488. Repeal and Savings.--(1) With effect from the date of coming into force of this Act, the Bihar Municipal Act, 1922, Patna Municipal Corporation Act, 1951, Bihar Municipal Corporation Act, 1978, Bihar Regional Development Authority Act, 1981, Bihar Town Planning & Improvement Trust Act, 1951, Bihar Restrictions of Uses of Land Act, 1948, Bihar Municipal Ordinance, 2007 shall stand repealed.

(2) Gram Panchayats, Panchayat Samities and Zila Parishads, constituted under the Bihar Panchayat Raj Act, 2006, whose jurisdiction extends over the Municipal Area shall not exercise powers and functions as have been entrusted to the Municipality under this Act.

27. Furthermore, in the case of Mahnar Nagar Panchayat (supra) a Bench of this Court observed that Municipality will have preferential right over an individual to settle and run a bus stand. In the aforesaid case, the Transport Authority approved a private land of respondent no. 7 therein, for starting a bus stand. The Nagar Panchayat raised an objection staking claim to settle and run a bus stand within its territorial limit. The stand of Nagar Panchayat was upheld by this Court. The learned Judge granted liberty to the Nagar Panchayat to make a request to the Regional Transport Authority for approving any other site for settlement and running of a bus stand in supersession to the claim of respondent no. 7. Till approval of alternative site, the learned Judge directed that District Administration to run the bus stand and collect the tolls.

28. The respondent Zila Parishad raised the issue of locus of petitioner to maintain this writ application. The submission is that the Municipality being body corporate, it alone can sue or be sued. The petitioner who was the Vice-Chairman of Nagar Panchayat could not have sued the Zila Parishad for the reliefs sought for in this writ application. On the other hand, the petitioner submits that he was duly authorized to prefer this writ application on behalf of the Municipality. A resolution authorizing the petitioner to take steps in this regard including filing of case has been brought on record through the supplementary affidavit. I find that the petitioner was a Ward Member and a Vice-Chairman of Nagar Panchayat, Jhajha at the relevant time. It cannot be said that the petitioner being a Ward Member and Vice-Chairman would have no interest in the affairs of the Municipality. Similarly, it cannot be said that the petitioner is a free-lancer or a busy body totally unconnected with the interest of Municipality. Thus, I reject the contention of the respondents that the instant writ application is not maintainable at the behest of the petitioner.

29. In backdrop of the aforesaid discussions, I hold that the Nagar Panchayat or Municipality will have preferential right to settle and run a bus stand and to collect tolls in preference to the right of any other local body, entity or individual within its territorial area provided the site is approved by the competent transport authority. The Municipality cannot settle or run a bus stand on a land held by Zila Parishad or other local body or individual without their consent. The Municipality in such eventuality can make a request to Regional Transport Authority for determining another site either on its own land or on a land taken by it on lease. It will be up to the Regional Transport Authority either to approve such site or not.

30. In the instant case, Transport Authority had approved site for running of bus stand/taxi-maxi stand which is a land of Zila Parishad. The Nagar Panchayat, a Municipality which has a preferential claim has made objection to settlement of bus stand by Zila Parishad. In such circumstances the Zila Parishad, Jamui cannot continue with settlement of bus stand/bus stops even on its own land and is hereby restrained from making any such settlement. The site earlier approved for running bus stand and collecting toll would only be transferred to Nagar Panchayat if Zila Parishad consents to it and for which it can charge due rent from Nagar Panchayat. In case the Zila Parishad does not consent to transfer its premises to Nagar Panchayat for bus stand/bus stops, the latter would be at liberty to make a request to Transport Authority for an alternative site, which would be duly processed by the Regional Transport Authority.

31. Till final decision regarding alternative, site is taken by the Transport Authority, the District Administration would control and maintain the bus stand within Nagar Panchayat, Jhajha and make arrangement for collection of tolls. If the District Administration collects tolls on a land of Zila Parishad, it would have to pay rent to it. The writ application is thus allowed to the extent indicated above.