

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20463 of 2021

Smt. Sindhu Singh, wife of Chandra Shekhar Singh, resident of Ramnagar
Andar Dhala Siwan, P.S.-Siwan Town, Dist-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Principal Secretary General Administration, Govt. of Bihar, Patna.
4. The Director Municipal Administration Directorate/Special Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
5. The Under Secretary, Municipal Administration Directorate Urban Development and Housing Department, Govt. of Bihar, Patna.
6. The District Magistrate, Siwan.
7. The Additional Collector, Siwan.
8. Executive Officer, Nagar Parishad, Siwan.
9. Vikram Kuer, son of Jagdish Kuer @ Yugal Kuer, resident of Village-Phulwaria, P.S.-Raghunathpur, Dist-Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate Mr. Ashok Kumar, Advocate Mr. Bibhuti Narayan, Advocate
For the State	:	Mr. Lalit Kishore (AG) Mr. Kinkar Kumar, SC-9
For Respondent No. 9	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vikas Kumar, Advocate
For the Intervenor	:	Mr. Y.C. Verma, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-02-2022

The democratic set up of the country has been recognized as basic feature of the Constitution, like other



features, namely, supremacy of Constitution, rule of law, principle of separation of powers, power of judicial review under Articles 32, 226 and 227 of the Constitution. 'Basic' means the basis of a thing on which it stands, on the failure of which it falls. The enunciation of law to this effect in case of *Ravi Yashwant Bhoir vs. District Collector, Raigad and others* reported in (2012) 4 SCC 407 is being referred at the outset in the present judgment for two basic reasons. Firstly, we are utterly dismayed over the manner in which the Principal Secretary of Urban Development and Housing Department, Govt. of Bihar (Department in short), in exercise of power under Section 25(5) of the Bihar Municipal Act, 2007 (for short 'the Act') has passed an order removing the petitioner from the post of Chief Councillor, Siwan Nagar Parishad. Secondly, the order which has the effect of removal of a person, democratically elected to an office of a local body having constitutional status, is patently perverse, disclosing complete non-application of mind.

2. In the present writ application, the petitioner has put to challenge an order dated 29.11.2021, issued by the Department under the signature of its Under Secretary. We consider it apt to reproduce the impugned order verbatim:-

“बिहार सरकार
नगरपालिका प्रशासन निदेशालय
(नगर विकास एवं आवास विभाग)



आदेश

संचिका संख्या-10/न0वि0/विविध-06/2021

दिनांक:-

श्री विक्रम कुंवर, पूर्व राज्य मंत्री एवं अन्य द्वारा जिला पदाधिकारी को समर्पित परिवाद पत्र की जाँच जिला पदाधिकारी, सिवान द्वारा कराई गई तथा जाँचोपरान्त जाँच प्रतिवेदन पत्रांक-775, दिनांक-06.04.2021 द्वारा प्रेषित किया गया है। जाँच प्रतिवेदन में श्रीमति सिन्धु सिंह, मुख्य पार्षद, नगर परिषद, सिवान के विरुद्ध निम्नलिखित आरोप प्रमाणित पाए गए हैं :-

- (i) नगर परिषद, सिवान के मुख्य पार्षद के पद पर रहते हुए दिनांक-27.06.2017 को अस्पताल मोड़ से तरवार मोड़ तक सड़क का 5 फीट चौड़ीकरण कार्य योजना प्राक्कलित राशि रू0 49,91,500.00 (उनचास लाख इक्यानवे हजार पाँच सौ) का एकरारनामा किया गया और पार्षद रहते हुए कार्य कारया गया।
- (ii) योजना में प्रयुक्त होने वाली सामग्री की जाँच कार्य के पहले और बाद में भी नहीं कराई गई हैं।
- (iii) कार्यादेश के अनुसार योजना दिनांक 26.09.2017 को पूर्ण होने वाली थी, जिसमें पद का दुरुपयोग करते हुए दिनांक 20.02.2018 को पूर्ण किया गया और बिना समय विस्तार कराये और बिना 10 प्रतिशत की राशि की कटौती किये 5 (पाँच) किश्तों में भुगतान किया गया।
- (iv) निविदा आमंत्रण सूचना 1600, दिनांक 07.09.2016 की कंडिका संख्या-26 में स्पष्ट अंकित है कि सुरक्षित जमा राशि कार्य समाप्ति के तीन वर्ष पश्चात कार्य संतोषप्रद होने के बाद ही विमुक्त की जाएगी। शर्त का उल्लंघन करके सुरक्षित जमा राशि रू0 3,17,000.00 (तीन लाख सत्तरह हजार) वाउचर संख्या 11, चेक नं0- 307/043, दिनांक 08.08.2019 द्वारा प्राप्त कर ली गई।
- (v) कूड़ा निस्तारण के नाम पर सरकार के निदेशों से हटकर, बिना सक्षम अधिकारी से आदेश प्राप्त किये रू0 4,00,037,85.00 (चार करोड़ तीन हजार सात सौ पचासी) रूपये जमीन क्रय के नाम पर खर्च किए गए हैं।
- (vi) नगर परिषद, सिवान के साधारण बैठक से रू0 50,000,00.00 (पचास लाख) तक की खरीदारी की प्रशासनिक स्वीकृति की शक्ति प्राप्त है, इतनी बड़ी राशि की खरीद के लिए पूर्व में सक्षम प्राधिकार से



स्वीकृति प्राप्त नहीं की गयी है।

- (vii) तत्कालीन कार्यपालक पदाधिकारी को दिनांक 30.06.2017 दिया गया आदेश “प्रतिवेदन बोर्ड की बैठक में रखकर प्रस्ताव की संपुष्टि प्राप्त करें”, बोर्ड की बैठक का तात्पर्य साधारण बैठक से होता है, जबकि विशेष बैठक दिनांक 30.06.2017 के प्रस्ताव संख्या-4 के अन्यान्य XXI द्वारा स्थाई समिति की बैठक दिनांक 27.06.2017 की संपुष्टि की गयी है।
- (viii) क्रय की गयी जमीन पर नगर परिषद अपना कब्जा नहीं कर पा रहा है। निजी भूमि का क्रय ग्रामीणों के विरोध के बावजूद भी स्वार्थ पूर्ति के लिए किया गया है और जमीन का उपयोग नहीं हो रहा है।
- (ix) भूमि क्रय के डीड के पृष्ठ संख्या-4 में भुगतान विवरणी के कॉलम में लिखा गया है कि जमीन के मूल्य का भुगतान उनके एवं उनलोगों के गठित समूह यूनिक डेवलपर्स द्वारा संयुक्त रूप से होगी जबकि डीड से विक्रेता के रूप में यूनिक डेवलपर्स नहीं है।
- (x) यूनिक डेवलपर्स को बड़ी राशि का भुगतान सरकारी दिशा निर्देशों से हट कर किया गया है, जिससे प्रत्यक्ष अथवा अप्रत्यक्ष रूप से लाभ अर्जित किया जाना प्रकट होता है।

2. श्रीमति सिन्धु सिंह, मुख्य पार्षद, नगर परिषद, सिवान के द्वारा इस संबंध में स्पष्टीकरण समर्पित किया गया है, जिसे स्वीकार-योग्य नहीं पाया गया है। स्पष्ट है कि उनके द्वारा अपने कर्तव्यों के निर्वहन में दुराचार/भ्रष्टाचार किया गया है।

अतएव बिहार नगरपालिका अधिनियम, 2007 की धारा 25 (5) में निहित प्रावधान के आलोक में श्रीमति सिन्धु सिंह, मुख्य पार्षद को अपने पद से पदच्युत किया जाता है।(Underlined for emphasis)

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सरकार के अवर सचिव।”

3. A near English translation of the said impugned order would read thus:-

“The complaint petition submitted to the District Magistrate by Sri Vikram Kuer Ex-Minister of State and others was got



enquired by the District Magistrate, Siwan and upon enquiry, enquiry report was submitted through Memo No. 775, dated 06.04.2021. In the said enquiry report following allegations against Smt. Sindhu Singh, Chief Councillor, Nagar Parishad, Siwan were found proved:-

(i) An agreement was executed for widening of road from Aspatal More to Tarwar More by 5 ft. on 27.06.2017 at the estimated cost of Rs. 49,91,500.00 and the work was got executed while the petitioner was holding the post of Chief Councillor, Nagar Parishad, Siwan.

(ii) Articles to be used in the scheme were checked neither before work nor after work.

(iii) The work was to be completed by 26.09.2017 according to work order of the scheme. Smt. Sindhu Singh misusing the power of post, caused it to be extended up to the date 20.02.2018 and without getting the time extended and without deducting 10 % of the amount, payment was made in five installments.

(iv) It is clearly mentioned in Clause 26 of the notice inviting tender 1600 dated 07.09.2016 that the reserved amount would be released three years after satisfactory completion of the work. In violation of the said condition of contract, the reserved amount of Rs. 3,17,000.00 was received vide voucher No. 11, Cheque No. 307/043 dated 8.8.2019).

(v) Without order of competent authority the amount to the tune of Rs. 4,00,03785.00 has been spent for the purchase of land in the name of Garbage disposal.

(vi) Administrative approval to the tune



of Rs. 50,000,00.00 for all kind of purchases has been obtained in General Body meeting and no prior Approval from competent authority for purchase of such a huge amount has been taken earlier.

(vii) There was an order dated 30.06.2017 to the then Executive officer to get the confirmation of the proposal by placing the report in the meeting of the Board. The meeting of the Board means the General meeting, while in special meeting the proposal No. 4 – anyanya XXI was confirmed in the meeting of the standing committee dated 27.06.2017.

(viii) The Nagar Parishad is unable to take possession of the land, it has purchased. Despite the opposition of the villagers, the purchase of private land has been done with vested interest and the land is not being used.

(ix) In the column of payment statement in page No. 4 of the deed of purchase of land, it is written that the payment of the value of the land will be done jointly by him and the Unique Developers, group formed by them, whereas as Unique Developers is not there as a seller.

(x) Huge amount has been paid to Unique Developers against Government guidelines which show direct or indirect benefit derived with vested interest.

2. Show cause reply in this regard was submitted by Smt. Sindhu Singh, Chief Councillor, Nagar Parishad, Siwan, which was not found to be worth acceptable. It is apparent that she has indulged in irregularities/ corruption in discharge of her responsibilities/ duties.

Therefore, Smt. Sindhu Singh, Chief Councillor is hereby removed from her



post in the light of the provision under Section 25(5) of Bihar Municipal Act, 2007.”

4. Paragraph 2 of the impugned order is the only consideration recorded in the order before taking a decision to remove the petitioner from the said post.

5. We have heard Mr. Sanjay Singh, learned senior counsel appearing on behalf of the petitioner, Mr. Lalit Kishore, learned Advocate General representing the State of Bihar assisted by Mr. Kinkar Kumar learned SC-9 and Mr. P.K. Shahi, learned senior counsel for the respondent No.9 on whose complaint the impugned order has been passed. We have also heard Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of one Intekhab Ahmad on whose behalf an application for intervention has been filed asserting that he is a necessary party who should be allowed to be heard upon his impleadment as a party respondent since he had made an application before the Chief Minister, Bihar, Deputy Chief Minister, Bihar and Chief Secretary of Bihar regarding the irregularities committed by the petitioner, whereafter an enquiry was held against the petitioner leading to finding against her of misappropriation of the funds of the said *Nagar Parishad, Siwan*.

6. Mr. Sanjay Singh, learned Senior Counsel appearing



on behalf of the petitioner has argued that impugned order is unreasoned, non-speaking and has been passed without giving the petitioner any opportunity of hearing. With these submissions he contends that the impugned order is violative of principles of natural justice.

7. We must notice at the outset that Mr. Lalit Kishore, learned Advocate General has submitted that the impugned order passed by the Principal Secretary cannot be sustained, the same being apparently non-speaking and sans reasons. He concedes that the said order is indefensible.

8. Mr. Shahi, learned senior counsel appearing for respondent No. 9 has also conceded that the impugned order is unsustainable on the sole ground that the same does not disclose any reason for rejecting the petitioner's reply to the show-cause notice.

9. Mr. Yogesh Chandra Verma learned senior counsel appearing on behalf of the said intervenor applicant has, on the other hand, submitted relying on a Supreme Court's decision in case of *State of Maharashtra and others vs. Prabhu* reported in *(1994) 2 SCC 481* that Article 226 of the Constitution of India is an equity jurisdiction and, therefore, even if the impugned order may not be treated to be technically sound, considering the nature



of allegation against the petitioner, this Court may not interfere with the impugned order for the sake of justice as quashing of the impugned order would result into restoration of the petitioner's position as the Chief Councillor of the said *Nagar Parishad*. Reliance has also been placed by him on a decision of this Court in case of *State of Bihar vs. Akhil Bhartiya Jan Kalyan Sangh and others* reported in *2000(1) PLJR 632*, as according to him, interference by this Court in exercise of power under Article 226 of the Constitution of India would cause miscarriage of justice.

10. Having heard learned Senior Counsel for the petitioner, learned Advocate General for the State of Bihar, learned Senior Counsel for the private respondent No. 9 and learned Senior Counsel for the intervenor applicant, we have given our anxious consideration to their rival submissions and the rival pleadings on record.

11. To begin with, it is deemed apposite to notice Section 25 of the Act, which deals with removal of Chief Councillor /Deputy Chief Councillor. Sub-section (5) of Section 25 of the Act, which has been invoked by the Department to pass the impugned order, reads as under:-

“25(5) Without prejudice to the provisions under this Act, if, in opinion of the [Government] the Chief Councillor/Deputy Chief Councillor



absents himself without sufficient cause for more than three consecutive meetings or sittings or wilfully omits or refuses to perform his duties and functions under this Act, or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Divisional Commissioner may, after giving the Chief Councillor/Deputy Chief Councillor a reasonable opportunity for explanation, by order, remove such Chief Councillor from office.”

12. The impugned notification has admittedly been issued in the light of the order passed by the Principal Secretary of the Department which is said to have been approved by Departmental Minister.

13. It is specific case of the petitioner that she was not supplied with the enquiry report which has been relied upon by the Principal Secretary in his impugned order. It is the petitioner's further case that no opportunity of hearing was afforded to her. Further as the impugned order does not deal at all, with the petitioner's reply to the show cause notice and it does not disclose any application of mind, the impugned order deserves to be set aside.



14. From reading of the impugned order, it is evident that the same has been passed on a complaint made by Respondent No-9, a former State Minister of this State. It is not difficult to notice from the impugned order that it merely refers to the findings in an enquiry conducted by the District Magistrate, Siwan, whereafter a show cause notice was issued to the petitioner. There is specific statement made in paragraph 8 of the writ petition that the petitioner was not provided with a copy of any enquiry report. The reply to the show cause notice has been brought on record by way of Annexure-3 to the writ application dated 28.09.2021, from which, it appears that the petitioner had denied all the allegations made against her and had given her explanations in relation to the allegations made against her.

15. In the counter affidavit filed on behalf of the State of Bihar, sworn by the Project Officer-cum -Deputy Director, Urban Development and Housing Department, the impugned order has been defended and while denying the statement made in the writ petition, it has been stated that the Special Secretary, Urban Development and Housing Department had mentioned the charges as contained in the enquiry report in his show cause notice. There is, however, no specific denial of the petitioner's allegation that the enquiry report, which was the basis for passing



the impugned order was not supplied to the petitioner.

16. The matter was earlier heard on 27.01.2021. Taking into account the admitted factual aspects emerging from records and submissions made on behalf of the parties, including that of Mr. P.K. Shahi, learned Senior Counsel and perusing the impugned order following order was passed on 27.01.2021:-

“This matter has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

Mr. Kinkar Kumar, learned counsel appearing on behalf of the State of Bihar has attempted to defend the order which is impugned in the present application with his submissions that the reasons are available in the concerned file of the Department. He has further submitted that the State needs to file a supplementary counter affidavit to justify the correctness of the impugned order. He states that to defend the impugned order, learned Advocate General shall represent the State of Bihar.

In our prima facie view, the said impugned order is patently illegal, the same being non-speaking and unreasoned having serious civil consequences.

Despite our observation that the impugned order appears to be manifestly illegal requiring interference by this Court, learned counsel for the



State has vehemently argued that the order is valid and to justify its validity a supplementary counter affidavit is to be filed.

It is, however, fairly submitted by Mr. P.K. Shahi, learned Senior Counsel representing the respondent no. 9 that the impugned order is unsustainable, being non-speaking.

List this case on 03.02.2022 as the first case.

For the reasons noted above, it is indicated that if in case the State fails to satisfy the Court and substantiate the stand which has been taken on behalf of the State of Bihar today, the Court will consider imposing exemplary cost. It is further indicated that no further adjournment shall be granted on the next date on any ground, as the matter has already been heard at length.”

17. No supplementary counter affidavit has, however, been filed for which the adjournment was sought on behalf of the State of Bihar.

18. However, on the subsequent date, when Mr. Lalit Kishore, learned Advocate General appeared in this case on behalf of the State of Bihar, he fairly conceded that the impugned order is indefensible and not sustainable at all. He added that he has sent to the Court a communication made by him dated 03.02.2022, addressed by him to the Principal Secretary, Urban



Development and Housing Department cautioning the authorities to pass such unreasoned, non-speaking order in future in exercise of power under Section 25(5) of the Act. Such orders must be in consonance with law and supported with reasons.

19. He has also produced before this Court another communication dated 05.02.2022 addressed by the Department to the office of the Advocate General mentioning therein that the Department itself proposes to pass a detailed reasoned order for which the court's permission may be obtained.

20. Despite the aforesaid stand taken on behalf of the State of Bihar and Respondent No-9, whereby they have conceded about the illegality of the impugned order, we have proceeded to decide the validity of the impugned order and the requirement of this Court to interfere in such matters, in the light of the objection taken on behalf of the intervenor-petitioner and also for the reason that the respondents are seeking this court's permission only to pass detailed reasoned order after withdrawing the impugned order, in the wake of the specific pleading by the petitioner in the writ petition that the enquiry report was not supplied to her and she was not given an opportunity of hearing.

21. We have deemed it fit to deal with intervention application (I.A. No. 1 of 2021) first as, in our opinion, the same



deserves to be dismissed as the intervenor-petitioner cannot be treated to be a necessary party in the present proceedings wherein an order passed under section 25(5) of the Act is under challenge. This view is fortified by the Supreme Court's decision in case of **Ravi Yashwant Bhoir** (supra) paragraphs 59 and 60 of which read as under:-

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons.

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved



party. (Vide Adi Pherozshah Gandhi v. Advocate General of Maharashtra [(1970) 2 SCC 484 : AIR 1971 SC 385] , Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671 : AIR 1976 SC 578] , Maharaj Singh v. State of U.P. [(1977) 1 SCC 155 : AIR 1976 SC 2602] , Ghulam Qadir v. Special Tribunal [(2002) 1 SCC 33] and Kabushiki Kaisha Toshiba v. Tosiba Appliances Co. [(2008) 10 SCC 766]) The High Court failed to appreciate that it was a case of political rivalry. The case of the appellant has not been considered in the correct perspective at all.”

22. The Supreme Court in case of **Ravi Yashwant Bhoir** (supra) has clearly laid down that a person having a remote interest cannot be permitted to become a party in the lis as the person who wants to become a party in a case has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial rights in the injured person. The Supreme Court has noted that a fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon an individual. In our opinion, I.A. No. 1 of 2021 seeking impleadment in the present writ application by the intervenor-petitioner is wholly misconceived and is, accordingly, dismissed.

23. We now proceed to address on the legality of the



impugned order and the manner of its passing. We have reproduced the impugned order passed by the Department of Urban and Housing Govt. of Bihar issued under the signature of the Under Secretary of the Department, to address the petitioner's grievance that it does not disclose any application of mind by the competent authority and there is no consideration at all of the petitioner's reply to the show cause notice. It is manifest from the impugned order that the only finding recorded in the impugned order in respect of the petitioner's explanation to the show cause notice is that the same is not acceptable. There is absolutely no discussion as to what explanation was given by the petitioner in her reply to the show cause notice and how the same was not acceptable. We need to notice, at this juncture, that in response to a plea taken by the petitioner that respondent no.5, the under Secretary of the Department has passed the impugned order, who was not competent to pass such order, it has been stated in the counter affidavit that the said order has been passed by the State Government and not by the under Secretary of the Department.

24. Dealing with the grounds taken in the writ petition to assail the impugned order, it has been stated in the counter affidavit that the Principal Secretary of the Department is empowered to remove the petitioner under Section 25(5) of the



Act and the decision has been taken by the Principal Secretary of the Department which has been approved by the Minister concerned. It has also been stated in the counter affidavit that every point submitted by the petitioner had been considered which, in Court's opinion, is manifestly incorrect inasmuch as, the impugned order does not disclose any such consideration.

25. A point has also been taken in the writ petition that no *Lok Prahari* has been appointed as required under Section 44 of the Act by the State Government. The *proviso* to sub-section (5) of Section 25 of the Act ordains that after appointment of a *Lok Prahari* under Section 44 of the Act, the Government may pass order under the said sub-section only on the basis of the recommendation of such *Lok Prahari*. Section 44 of the Act reads as under :-

“44. Lok Prahari.-(1) *The State Govt. shall appoint such number of Lok Prahari as the government may determine from time to time to inquire into any allegation of corruption, misconduct, lack of integrity, or any kind of malpractice or maladministration or misdemeanour of Chief Councillor/ Deputy Chief Councillor/ Officers and other employees of the Municipality, contained in a complaint in the form of an affidavit or on a reference from Government, or that has come to the*



notice of the Lok Prahari and pass order as soon as possible but not later than three months.

(2) The qualification, terms and conditions and tenure of appointment and the powers and duties of the Lok Prahari shall be as may be prescribed by the Government.

(3) The State Government shall, by notification, entrust the responsibilities to the Lok Prahari, for conducting such inquiry or taking any other suitable action in the manner as may be prescribed under the Rules by the Government.”

26. It is an admitted position that even after lapse of 11 years of incorporation of the aforesaid provision by way of amendment in the Act, *Lok Prahari* as ordained in Section 44 of the Act has not been appointed.

27. Before addressing on the question of validity of the impugned order, we consider it appropriate to notice the law laid down by the Supreme Court and observations made in various decisions while dealing with validity of an action taken by the Government against public representatives of the local bodies.

28. In case of *State of Punjab vs. Bhajan Singh* reported in *(2001) 3 SCC 565*, the Supreme Court has laid down that no person much less a civil servant can be permitted to frustrate the will of the people expressed at the elections, by his



acts of omission and commission. Any attempt made to weaken the system, particularly, when its intention is likely to affect the socio-political fabric of the society, if not checked and curtailed may result in consequences which could not be else, but disastrous to the system. In case of ***Bhajan Singh*** (supra), despite election as President of the concerned Municipal Council, the State Government was refusing to issue necessary notification under the provisions of Punjab Municipal Act. When the matter travelled to the Supreme Court, the Supreme Court deprecating the conduct of the State Government pass following order in paragraph 15 :-

“15. The appeal which is bereft of any merit is liable to be dismissed. We are at pain to note that by his acts of omission and commission the said Secretary has consistently and persistently deprived Respondent 1 of the duty to assume and discharge his duties as member and President of the Municipal Council, despite his election from 2-1-1998 till date. The term of the office of the Municipality is a fixed term out of which three years of Respondent 1 have been wasted in uncalled for and forced litigation upon him. No law can compensate the loss of opportunity provided to Respondent 1 for serving the people after his election as member and President of the Municipality. We find it a fit case to award exemplary costs and are of the firm view that such



costs should not be burdened upon the State exchequer. The said Secretary who is responsible for the violation of the statutory provisions and weakening the concept of rule of law, is, therefore, personally liable to pay the costs from his own pockets. While dismissing this appeal we direct the said Secretary to personally pay the costs of Rs 25,000 to Respondent 1 within a period of two months.” (Underlined for emphasis)

29. It would be beneficial, at this juncture, to notice another significant observation made by the Supreme Court in case of ***Tarlochan Dev Sharma vs. State of Punjab and others*** reported in ***(2001)6 SCC 260***, paragraph 16 of which reads as under:-

“16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties, or in



the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior. In Anirudhsinhji Jadeja [Anirudhsinhji Karansinhji Jadeja v. State of Gujarat, (1995) 5 SCC 302 : 1995 SCC (Cri) 902] this Court has held that a statutory authority vested with jurisdiction must exercise it according to its own discretion; discretion exercised under the direction or instruction of some higher authority is failure to exercise discretion altogether. Observations of this Court in Purtabpore Co. Ltd. [Purtabpore Co. Ltd. v. Cane Commr., Bihar, (1969) 1 SCC 308 : AIR 1970 SC 1896] are instructive and apposite. Executive Officers may in exercise of their statutory discretions take into account considerations of public policy and in some context, policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but they are not absolved from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for instructions by a superior to bind them. As already stated, we are not recording, for want of adequate material, any positive finding that the impugned order was passed at the behest of or dictated by someone else than its author. Yet we have no hesitation in holding that the impugned order betrays utter non-application of mind to the facts of the case and the relevant law. The manner



in which the power under Section 22 has been exercised by the competent authority is suggestive of betrayal of the confidence which the State Government reposed in the Principal Secretary in conferring upon him the exercise of drastic power like removal of President of a Municipality under Section 22 of the Act. To say the least, what has been done is not what is expected to be done by a senior official like the Principal Secretary of a wing of the State Government. We leave it at that and say no more on this issue.”
(Underlined for emphasis)

30. In our opinion, the petitioner has rightly placed reliance on Supreme Court’s decision in case of **Ravi Yashwant Bhoir** (supra) which had arisen out of an action taken by the Chief Minister of Maharashtra of removal of the President of the Urban Municipal Council in exercise of power under the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965. Noticing the constitutional status conferred on the municipalities by amending the Constitution by the 74th Amendment Act, 1992 the Supreme Court in case of **Ravi Yashwant Bhoir** (supra) has stated that an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of provisions of Article 14 of the Constitution, by the State by adopting a casual



approach. The Supreme Court further laid down that undoubtedly an elected official in local self government has to be put on a higher pedestal as against a government servant. The Court observed that if a temporary government employee cannot be removed on the ground of proved misconduct without holding a full-fledged enquiry, it is difficult to imagine how an elected office bearer can be removed without holding a full-fledged enquiry. Paragraph 34 of the said decision can be usefully reproduced hereinbelow to emphasize the importance of democratic institutions like local self government.

“34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office-bearer sought to be removed.”

31. The Supreme Court further observed in **Ravi Yashwant Bhoir** (supra) that an elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as not only that he



is removed from the post and declared disqualified to contest the elections for further stipulated period, but it also takes away the right of the people of his Constituency to be represented by him. Though, right to hold such post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal. Thus, the consequence of an order passed in exercise of power under sub-section(5) of Section 25 is not only removal of a duly elected Chief Councillor /Deputy Chief Councillor but it also creates disqualification, once removed in exercise of said power for being re-elected as Chief Councillor /Deputy Chief Councillor or Councillor during the remaining term of office of such municipality. Apart from statutory disqualification, the order passed in exercise of powers under section 25(5) also leaves a social stigma, marring future electoral prospects, and is thus required to be passed strictly in accordance with the statute, observing the principles of natural justice.

32. Considering the severity of the consequence in exercise of power under sub-section (5) of Section 25, the authorities were required to take greater care before passing such order and required to ensure that all the safeguards provided in



Statute were scrupulously followed. [see *(1999)6 SCC 172 (State of Punjab vs. Baldev Singh)*].

33. We do not intend to encumber this judgment by reiterating and referring to consistent judicial pronouncements that an order passed in exercise of quasi judicial power must be informed by reasons. The reasons must be reflected in the order itself. Such order must also reflect due application of mind. If the order is being passed in exercise of quasi judicial power, having civil or evil consequences, the same must be passed after giving the person going to be affected a reasonable opportunity to explain his/her case and hearing, if warranted. Once an explanation in reply to any show cause notice is submitted by the person concerned, it is obligatory on the part of the authority concerned to duly consider the same. Such consideration must be reflected in the order itself. It is also well settled that if an authority exercising quasi judicial function relies on any material or document while passing an order having adverse civil consequences, he is under obligation to supply such materials to the person who is going to be affected so as to afford him reasonable opportunity to explain his/her conduct. These are such fundamental rules governing principles of natural justice that they need to be strictly adhered to by all authorities exercising



quasi judicial functions, without exception unless any specific statutory instrument carves out an exception.

34. We express our anguish over the manner in which the impugned order dated 29.11.2021, which is said to have been passed by the Principal Secretary of Urban Development and Housing Department as disclosed in the counter affidavit. The said order is in flagrant violation of the principles of natural justice. The causal and cavalier manner in which the order has been passed is reprehensible. The authority who has taken the impugned action appears to be insensitive about the consequences of an order passed under sub-section (5) of Section 25 of the Act. It is trite that State within the meaning of Article 12 of the Constitution is under obligation to act fairly without ill-will or malice in fact or in law. In case of *Ravi Yashwant Bhoir* (supra), the Supreme Court has held that where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. 'Legal malice' or 'malice in law' means something done without lawful excuse. It is a deliberate act in disregard to the rights of the others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause and not necessarily an act done with ill-feeling and spite.



35. There is no material for us to reach a conclusion that the impugned action is an act done with 'ill-feeling and spite'. We are, however, of definite opinion that there is no lawful excuse for passing the impugned order which is in utter disregard to the rights of the others. We accordingly hold that the impugned order has been passed with an 'oblique and indirect object', the expression used by Supreme Court in case of **Ravi Yashwant Bhoir** (supra) in similar situation.

36. Though, we have rejected the intervention application (I.A. No. 1 of 2021) we consider it apt to deal with the Supreme Court's decision in case of **Prabhu** (supra) relied on by Mr. Y. C. Verma, learned senior counsel, in the background of the fact that this Court has been requested not to interfere with the impugned order, in exercise of equity jurisdiction of the High Court under Article 226 of the Constitution of India, despite the impugned order being in clear violation of principles of natural justice.

37. The said decision in the Court's opinion is clearly distinguishable on facts. In the said case, the respondent before the Supreme Court was nominated as member of the State Board of Maharashtra Secondary and Higher Secondary Education who was subsequently removed after noticing the materials which



were not available at the time of his nomination. The present case pertains to removal of an elected representative of a local body.

38. In view of the aforesaid discussions, in our opinion, the impugned order dated 29.11.2021 issued vide memo No. 3484 by the Department of Urban Development and Housing deserves to be set aside and is accordingly hereby set aside. We must notice, at this stage, the stand of the Department as communicated to the learned Advocate General that the Department proposes to pass a detailed reasoned order after withdrawing the order which is impugned. The Department is seeking the Court's permission for the said purpose.

39. Despite the said communication we have chosen to interfere with the impugned order for the reason that the Department is seeking the Court's permission only for passing reasoned order without following other requirements i.e. supply of enquiry report and giving the petitioner an opportunity of hearing. The Court, in such circumstances, refuses to grant the permission as sought.

40. However, we make it clear that we have not gone into the correctness or otherwise of the allegations against the petitioner. Any observation made in the present writ application



shall not be treated to be any observation on merits of such allegation.

41. In such view of the matter, it will be open for the respondents, if so advised, to pass appropriate orders, but in accordance with law, after strictly following the principles of natural justice. The Court expects that the State respondents, while taking any such decision shall keep in mind the law enunciated in this regard in case of *Ravi Yashwant Bhoir* (supra).

42. Because of patently illegal order passed by the Principal Secretary of the Department, the petitioner remained out of the office of the Chief Councillor, Siwan Nagar Parishad. Following the Supreme Court's decision in case of *Bhajan Singh* (supra), we are of the view that it is a fit case for imposition of exemplary cost. We, accordingly, direct the State of Bihar to pay a cost of Rs. 25,000/- (Twenty Five Thousand) to the petitioner within two weeks from today.

43. This application is allowed with the aforesaid directions and observation. The consequences of the quashing of the impugned order shall follow.



44. It is recorded that present order has been passed in presence of Mr. Kinkar Kumar, learned SC-9 for the State of Bihar.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14 .02.2022
Transmission Date	NA

