

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17721 of 2015

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Roop Narayan son of Shri Ram Narayan Prasad resident of Mohalla - Mehandiganj
Po and PS - Patna City, District - Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Town Planning Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Town Planning Department, Government of Bihar.
3. The Principal Secretary, Department of Law & Justice Department, Govt. of Bihar.
4. Patna Municipal Corporation through its Chief Executive Officer Cum Municipal Commissioner Maurya Lok Building Bailey Road, Patna.
5. Mr. Binod Kumar, son of Sri Janak Prasad Singh, resident of Mohalla-Mohanpur Punaichak, P.O. and P.S. Shastri Nagar, District-Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
Mr. Gajendra Pratap Singh, Advocate

For the State-Respondents : Mr. U. S. S. SINGH, G.P.-1

For the private Respondent: Mr. S.B.K. Manglam, Advocate

For the Patna Municipal Corporation: Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-12-2015

The petitioner is the Ex-Deputy Mayor of the Patna Municipal Corporation and by filing the present writ petition under Article 226 of the Constitution of India has prayed for a writ in the nature of certiorari for quashing the order dated 30.10.2015 bearing Memo No. 366 issued under the seal and signature of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna whereby and whereunder the petitioner has been removed from the post of Deputy Chief Councillor-cum-Deputy Mayor of the Patna Municipal Corporation for having incurred a disqualification under Section 25(5) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act').



Fact of the case briefly stated is that the petitioner was elected as a Councillor, Patna Municipal Corporation in the year 2012 and was also elected the Deputy Chief Councillor of the Corporation. A complaint was filed by the private respondent before the Principal Secretary, Department of Urban Development and Housing Department, Government of Bihar under Section 25(5) of the 'Act' praying for removal of the petitioner from the post of Deputy Chief Councillor *inter alia* on grounds that he had avoided to attend three consecutive meetings of the Empowered Standing Committee and thus had lost interest in the affairs of the Municipal Corporation having wilfully omitted to attend the same and thus had incurred the disqualification entailing removal from the post of Deputy Chief Councillor under Section 25(5) of the 'Act'.

Since the matter remained pending before the Principal Secretary that the private respondent moved this Court in CWJC No. 1825 of 2015 and this Court vide order passed on 02.02.2015 placed at Annexure-2 disposed of the writ petition with a direction to the Principal Secretary, Urban Development and Housing Department to dispose of the same in accordance with law and after giving an opportunity of hearing to the contesting parties preferably within six months of receipt / production of a copy of the order.

The non-compliance of the directions led to the filing of the contempt application at the instance of the private respondent bearing M.J.C. No. 2552 of 2015 and it is during the pendency of the said contempt application that final orders were passed by the Principal Secretary, Urban Development and Housing Department on the application filed by the private respondent on 30.10.2015 whereby the petitioner stands removed from the post of Deputy

Chief Councillor, Patna Municipal Corporation and being aggrieved he is before this Court.

Mr. Jitendra Singh, learned senior counsel has appeared for the petitioner, the State is represented by Mr. Uday Shankar Sharan Singh, G.P.-1, the Patna Municipal Corporation is represented by Mr. Prasoon Sinha and the private respondent is represented by Mr. S.B.K. Manglam.

This matter was heard on 26.11.2015 and when this Court passed the following orders:

“Amongst other issues raised in the writ petition three primary issues of law has been raised by Mr. Jitendra Singh learned Senior Counsel appearing on behalf of the petitioner to question the order of removal passed against the petitioner by the Principal Secretary, Urban Development and Housing Department dated 30.10.2015 impugned at Annexure-1 to the writ petition whereunder the petitioner stands removed from the post of Deputy Chief Councillor, Patna Municipal Corporation under section 25(5) of the Bihar Municipal Act, 2007(hereinafter referred to as ‘the Act’) and the rules framed thereunder inter alia on the grounds of non-participation in the meetings of the Empowered Standing Committee on five consecutive dates. The issues raised by Mr. Singh *inter alia* are:-

- (a) Since after the amendment of ‘the Act’ vide Amendment Act 7 of 2011 whereunder the words ‘Divisional Commissioner’ as occurring in Section 25(5) of ‘the Act’ has been replaced by the word ‘Government’ and the appellate power vested in the State Government under Sub-section (6) of Section 25 stands removed,**

the jurisdiction would shift to the Minister Incharge in view of rules 5, 21,22 and 23 and the schedule to the Rules of Executive Business framed under Article 166 of the Constitution of India.

- (b) **In view of the amendment to Section 44 of ‘the Act’ vide Amendment Act 7 of 2011 whereunder a mandate has been issued to the State Government to appoint Lok Prahari to enquire into the complaints of lack of integrity, malpractice, misdemeanor or the likes, levelled by any person against the Chief Councillor/Deputy Chief Councillor, it is only upon a recommendation made by the Lok Prahari under the amended proviso to Section 25(5) of ‘the Act’ that any action of removal can be taken by the State Government against the Chief Councillor/Deputy Chief Councillor concerned under Section 25(5) of ‘the Act’ and the failure on the part of the State Government to appoint a Lok Prahari and to comply with the mandate of the legislature would render the present exercise illegal; and**
- (c) **The words meetings and sittings as occurring in Section 25(5) of ‘the Act’ would mean a meeting\sitting of the municipality and not of the Empowered Standing Committee alone.**

Since these are plainly issues of law not bordering on any fact, let a counter affidavit be filed by the State Government specifically to the issues raised, duly sworn by the Principal Secretary of the Department.

Let the Government also clarify whether the term ‘State Government’ would mean the Minister Incharge of the Department concerned exclusively and/or whether any delegation has been made in

favour of the Principal Secretary, Urban Development Department to dispose such matters.

Enabling learned State counsel to file the affidavit, put up this case at the top of the same list on 1.12.2015.

Let the counter affidavit be served on the parties by Monday i.e. 30.11.2015.

It is stated by Mr. Singh that the election to the post of Deputy Chief Councillor is slated for Monday i.e. 30.11.2015. Instead of staying the election this Court would direct and hold that any election to the post of Deputy Chief Councillor, Patna Municipal Corporation held in the meanwhile would be subject to the result of this writ petition.”

The issues having been noted, the parties have addressed the Court with a view to final disposal of the writ petition.

Mr. Jitendra Singh, learned senior counsel appearing for the petitioner proceeding on the issues which stand noted in the order of this Court dated 26.11.2015 referred to the statutory provisions underlying Section 25(5) of the ‘Act’ to submit that the power of removal of the Chief Councillor / Deputy Chief Councillor, by virtue of the amendments incorporated under the Amendment Act 7 of 2011 now vests in the ‘State Government’. Mr. Singh straightaway referred to the counter affidavit filed by the Principal Secretary more particularly paragraph-4 to 7 thereof to submit that the Principal Secretary has very candidly accepted that the proceeding has been conducted by him and even the final orders have been passed by him in compliance of the order passed by this Court in CWJC No. 1825 of 2015. It was argued that the Principal Secretary has completely



misinterpreted the directions of this Court as present in Annexure-2 for at no stage did this Court direct the Principal Secretary to adjudicate on the matter of removal on merits and pass final orders rather the only direction passed by this Court, as manifest from Annexure-2, is of disposal of the application in accordance with law and after giving opportunity of hearing to the parties. Mr. Singh next referred to the Rules of Executive Business framed by the Hon'ble Governor under Article 166(3) of the Constitution of India and with particular reference to Rule 5, 11, 21, 22 and 23 thereof it was contended that it is the Minister In-Charge of the Department exclusively who has been vested with the powers of disposal of the matters subject to any 'Standing Order' issued by the Minister authorizing the Principal Secretary of any such disposal. Learned counsel again with reference to the counter affidavit of the Principal Secretary submits that there is no such 'Standing Order' enclosed in the counter affidavit which contains an authorization to the Principal Secretary to conduct the hearing and pass orders on behalf of the 'State Government'. According to Mr. Singh although it is the stand of the Principal Secretary that the decision taken by him has the approval of the Minister In-Charge but that would not cure the defect. Learned counsel in support of his submissions has relied upon a judgment of the Constitution Bench of the Supreme Court reported in **AIR 1959 SC 308 (G. Nageshwara Rao vs. A.P.S.R.T. Corpn.)** and with particular reference to paragraph-4, 15, 18, 21, 25 and 31 thereof he submits that an identical situation having arisen in the said case, the Constitution Bench examining similar provisions present in Section 68C and 68D of the Motor Vehicles Act, 1939 vesting powers in the State Government to decide any matter in reference to the



Madras Government Business Rules and Secretariat Instructions framed under Article 166(2) and (3) of the Constitution of India has held that unless there is any standing order empowering the Head of the Department to pass any order, it would be the Minister In-Charge alone who is authorized to dispose of any quasi judicial matter. He submits that even the issue as to what would be a quasi judicial matter stands discussed in the judgment and it has been held that any matter where an authority is called upon to decide upon the respective rights of the contesting parties would be a quasi judicial exercise. According to Mr. Singh since the private respondent has questioned the right of the writ petitioner to continue as a Deputy Chief Councillor, he has raised a *lis* and which can only be decided in a quasi judicial manner. Learned counsel in support has relied upon the following decisions of the Supreme Court:

- (i) (2002) 5 SCC 685 para 20 to 22 (Indian National Congress vs. Institute of Social Welfare)
- (ii) (2003)10 SCC 620 para-5 (State of Maharashtra vs. Basantilal)

It is further the argument of Mr. Singh that the obligation cast upon the 'State Government' to adjudicate on the matter cannot be bifurcated between two authorities so as to enable the Principal Secretary to conduct a hearing and allow the Minister In-Charge to pass final orders. He submits that even this practice has been deprecated by the Supreme Court as being violative of the principle of natural justice. In substance, the argument of Mr. Singh has been that the order impugned passed by the Principal Secretary is neither the order of the 'State Government' nor its approval by the 'Minister In-Charge' would qualify it as an order of the State Government. It is his

submission that since the Minister In-Charge did not hold the hearing of the matter hence any approval to an order without opportunity to parties violates the principle of natural justice. Learned counsel in support of his submissions has also relied upon the following decisions of the Supreme Court:

- (a) (2010) 7 SCC 781 (Rasid Javed vs. State of U.P.); paragraph-4, 5, 22, 23, 51 and 52.
- (b) (2014) 6 SCC 564 (Union of India vs. Shiv Raj); paragraph-5
- (c) AIR 1996 SC 1669 (State Bank of India vs. S.K. Sharma); paragraph-11 and 32.

The second issue raised by Mr. Singh to question the impugned order is that the petitioner has attended no less than 24 meetings since 30.6.2012 until 31.8.2015 and to support his statement he refers to the letter of the Municipal Secretary placed at Annexure-7 to the second supplementary affidavit. He submits that in the circumstances it cannot be argued that the petitioner has wilfully omitted or refused to discharge his duties and function under 'the Act' inviting an order of removal. It was argued that the complaint rests on the charge that the petitioner has not attended the meetings of the Empowered Standing Committee on three consecutive dates as is manifest from the complaint present at Annexure-A to the counter affidavit of the respondent no. 5. According to Mr. Singh the meetings of the Empowered Standing Committee would not fall within the meaning of 'meeting and sitting' as envisaged in Section 25(5) of the 'Act'. However, no explanation was given by Mr. Singh as to the reasons for not participating in the meeting of the Empowered Standing Committee even when the petitioner as the Deputy Chief Councillor was the *ex officio* member of the Empowered Standing Committee in terms of Section 21(2) of the 'Act'.



The third issue canvassed by Mr. Singh is that by virtue of the Amendment Act 7 of 2011 the term 'Commissioner' occurring in various provisions of the 'Act' was replaced by the word 'State Government'; the provision of appeal available under Section 25(6) of the 'Act' was removed; an proviso to Section 25(5) of the 'Act' was added and Section 44 was amended to provide for appointment of a Lok Prahari for enquiring into allegation of corruption, misconduct, lack of integrity etc. against a Chief Councillor, Deputy Chief Councillor, Officers and other employees of a Municipality, on a complaint or on a reference from the Government or on gathering any such information. He submits that in view of the amendment incorporating the proviso to Section 25(5) read with the amended provision of Section 44 of the 'Act', any such exercise of removal of a Chief Councillor or a Deputy Chief Councillor could be only undertaken after a Lok Prahari has been appointed under Section 44 of the 'Act' and a report has been received recommending for such action. He submits that in absence of the appointment of a Lok Prahari and in absence of any such report as mandated in law, no such exercise could have been undertaken. To support his contention on the well settled proposition of law that where a statute prescribes a mode and manner of performance of an act, it has to be done in that manner alone and that the State Government cannot ignore its responsibility of appointment of Lok Prahari, learned counsel has referred to a judgment of the Supreme Court reported in **(2007) 13 SCC 673 (J.K. Industries vs. the Union)**; paragraph-138.

The argument of Mr. Singh has been contested by learned G.P.-1 as well as Mr. Manglam and who have mainly argued on the issue that an order



passed under Section 25(5) of the 'Act' is more in the nature of an administrative action and the provision itself merely requires the Chief Councillor / Deputy Chief Councillor concerned to be given a reasonable opportunity of explanation and thus cannot be brought within the realm of a quasi judicial exercise. It is the argument of learned counsel opposing the writ petitioner that an order of removal passed under Section 25(5) of the 'Act', is a mere declaration of a situation and since it is not in dispute that the petitioner did not participate in three consecutive meetings of the Empowered Standing Committee nor the petitioner gave any suitable explanation for his non-participation, in these eloquent circumstances, only a formal order of removal had to be passed and which has been passed by the Departmental Head having the approval of the Minister In-Charge. In sum and substance, the argument of learned counsel appearing for the respondents is that an order of removal passed under Section 25(5) of the 'Act' is an administrative exercise and not a quasi judicial exercise and thus neither requiring an opportunity of hearing nor in the circumstances, any issue of violation of natural justice can be raised. It is submitted that it is in the undisputed circumstances that a recommendation was made by the Principal Secretary and which has been approved by the Minister In-Charge thus completing the legal formality of an order being passed by the 'State Government'. Mr. Singh, learned G.P.-1 however when called upon to inform the Court as to whether any rule exists vesting power in the Principal Secretary to pass orders on behalf of the State Government and / or whether any 'Standing Order' has been issued and /or whether any authorization has been issued by the Minister In-Charge empowering the Principal Secretary

of adjudicating on such issue, failed to place on record any such authorization.

Learned counsel for the respondents responding to the other issues have argued that the term 'meeting' and 'sitting' occurring in Section 25(5) cannot be given any restrictive meaning to exclude the meetings of the Empowered Standing Committee nor an appointment of Lok Prahari is a condition precedent to an exercise of removal undertaken under Section 25(5) of the 'Act' by the State Government on any information gathered or complaint received in this regard.

I have heard learned counsel for the parties and I have perused the records and I would proceed to straightaway reject the issues raised by Mr. Jitendra Singh to give a restrictive meaning to the words 'meetings' or 'sittings' appearing in Section 25(5) of the 'Act' to exclude the meeting of Empowered Standing Committee for in absence of any restrictions provided under the provision, the word 'meetings' or 'sittings' appearing in Section 25(5) of the 'Act' would cover all meetings and sittings held in connection with the affairs of the Municipality including the meeting of the Municipality, the meeting of the Empowered Standing Committee or the special meeting held to consider a 'no confidence motion', as the case may be. In my opinion even the failure on the part of the State Government to appoint a Lok Prahari under Section 44 of the 'Act' is no ground to invalidate any proceedings initiated under Section 25(5) of the 'Act'. Although the legislature in its wisdom has created a body to enquire into the allegations against the elected representative and the officers of the Municipality but then a failure on the part of the State Government to carry out the obligation of

appointment of a 'Lok Prahari' is no impediment for an exercise under Section 25(5) of the 'Act'. Even the proviso to Section 25(5) of the 'Act' does not reflect that an appointment of Lok Prahari is a condition precedent for such exercise rather the only stipulation present in the proviso is that once a Lok Prahari is appointed under Section 44 of the 'Act' then any exercise undertaken under Section 25(5) of the 'Act' would only be on the basis of his recommendation. The language of the proviso itself is an answer to the issue raised by Mr. Jitendra Singh to reject the same.

This would bring this Court to the core issue raised by Mr. Singh i.e. whether the order impugned at Annexure-1 of the writ petition issued under the signature of the Principal Secretary, Urban Development and Housing Department can be termed as an order of the 'State Government'.

The Act as it was originally enacted in its provision underlying Section 25(5) empowered the Divisional Commissioner to initiate action against the Chief / Deputy Chief Councillor if in his opinion, the said functionaries had;

- (a) absented themselves without sufficient cause for more than three consecutive meetings or sittings; or
- (b) wilfully omitted or refused to perform their duties and functions under this Act; or
- (c) were found guilty of misconduct in discharge of their duties; or
- (d) become physical or mental incapacitated for performing duties; or
- (e) were found absconding being accused in a criminal case for more than six months.

The Divisional Commissioner in the circumstances explained, was empowered to pass appropriate order after giving the Chief Councillor / Deputy Chief Councillor a reasonable opportunity of explanation. The

unamended provision of Section 25(6) further provided for an appellate remedy before the State Government against the order of the Divisional Commissioner.

The Act was amended vide amending Act 7 of 2011 and when the words 'Divisional Commissioner' as occurring in Section 25(5) was replaced by the word 'Government' and the appellate remedy was deleted from the statute book. Vide Amendment Act 7 of 2011 some other amendments were made incorporating a proviso to Section 25(5) of the 'Act' and amending Section 44 of the 'Act' providing for appointment of a Lok Prahari to enquire into the allegations against the Chief Councillor / Deputy Chief Councillor and to submit his report. The proviso incorporated to Section 25(5) of the 'Act' mandated that after appointment of the Lok Prahari, any action could only be initiated upon receipt of a recommendation by the Lok Prahari.

The legislative intent of the amendments was loud and clear and any action against a Chief Councillor / Deputy Chief Councillor was not to be initiated in a very light manner. The very fact that the provision of appellate remedy has been deleted, it by itself meant that the responsibility in this regard had been vested in the highest body who alone was to take a decision in this regard by following the due process of law. The amendments wrested the jurisdiction from the departmental officials and vested it in the 'Government'. Now whether the Principal Secretary being the departmental head would mean the 'State Government' and whether the order passed by him would fall within the meaning of an order of the 'State Government', is the issue which falls for consideration in the present case.

Under Article 166(1) of the Constitution of India all executive actions



of the Government of a State is to be expressed and is to be taken in the name of the Governor. Article 166(2) of the Constitution provides that the orders and instructions made and executed in the named of the Governor shall be authenticated in such manner as may be specified in the Rules, to be made by the Governor. Article 166(3) further provides that the Governor shall make rules for convenient transaction of the business of the Government of State and for allocation amongst the Ministers of the said business except any business with respect to which the Governor is by or under the Constitution required to act in his discretion. It is in exercise of powers vested under Article 166(3) of the Constitution of India that the Governor of Bihar has framed the rules of Executive Business vide Notification No. G.S.R.3 dated 16.1.1979.

Rule 5 of the rules provides that the business of the Government shall be transacted in the departments specified in the First Schedule and shall be classified and distributed between those departments as laid down therein. The First Schedule attached to the rules lists the departments and the Urban Development Department appears at serial no. 9 thereof. The list showing classification and distribution of business amongst the departments also accompanies the rules and the Urban Development Department again appears at serial no. 9 thereof and item no. 1 of the list of business includes the business of local Government including the Municipality.

Rule 11 of the rules confers exclusive responsibility on the Minister In-Charge for disposal of the business appertaining to the department.

Rule 21 of the rules reiterates the position when it provides that ordinarily the cases would be disposed of by or under the authority of the

Minister In-Charge who may by means of standing orders give such direction as he thinks fit for disposal of cases in the department. Copies of such standing orders are to be sent to the Governor and the Chief Ministers.

Rule 21A(i) further provides that the Minister In-Charge in consultation with the Principal Secretary / Secretary shall so arrange the disposal of the departmental business that it is not processed at more than two levels from the Under Secretary upwards until it reaches the highest level of disposal.

Rule 22 further empowers each Minister by means of a standing order, to arrange with the Principal Secretary / Secretary as to what matters or class of matters is to be brought to his personal notice. Again these standing orders have to be sent to the Governor and the Chief Minister.

Rule 23 of the rules casts an obligation on the Principal Secretary / Secretary of the Department to submit cases to the Minister In-Charge.

The rules are too self eloquent to reflect any confusion and are incapable of misinterpretation. That the Constitution provides that all executive actions are to be in the name of the Governor and also vests the Governor to make rules to carry out the business and in exercise of which the rules of Executive Business have been framed by the Governor of Bihar, it is to be seen whether the Rules have been followed in the present case or have been given a go bye.

The records of proceedings were produced by the learned State counsel and which confirms that the entire proceedings have been conducted by the Principal Secretary which fact the Principal Secretary also accepted in paragraph-4 of his counter affidavit while shifting the onus on this Court.



As rightly argued by Mr. Jitendra Singh no order was passed by this Court while disposing of CWJC No. 1825 of 2015 conferring jurisdiction on the Principal Secretary to conduct the hearing rather all that this Court directed the Principal Secretary was, to dispose of the application of the private respondent in accordance with law and after opportunity of hearing to the contesting parties. A direction to the Principal Secretary to consider the application for its disposal in accordance with law does not mean an adjudication thereon merits nor confers a jurisdiction to adjudicate on the allegations seeking removal of the writ petitioner under Section 25(5) of 'the Act'. In fact the first issue that had to be considered by the Principal Secretary was whether the complaint as framed was maintainable and secondly whether he had jurisdiction to adjudicate on the matter or in view of the amendments, the matter had to be referred to the Minister In-Charge for adjudication. It is rather surprising that even when the records produced before this Court reflects that the Principal Secretary was aware that an order in this regard is to be passed by the 'State Government' and for the purpose he also sought the approval of the Minister In-Charge but while doing so the Principal Secretary fell in error in ignoring the stipulations of the Rules of Executive Business which exclusively vests the Minister In-Charge to dispose of matters and even if Rule 21 provides for authorization in this regard, neither any standing orders had been issued by the Minister In-Charge nor the Minister In-Charge had authorized the Principal Secretary to pass appropriate orders in matters of removal under Section 25(5) of 'the act'. In the circumstances even if the recommendation of the Principal Secretary has the approval of the Minister In-Charge but in view of the clear



stipulations present in Rule 11 and 21 read with Rule 5 of the Rules of Executive Business, the Principal Secretary had no jurisdiction to either conduct the proceedings or to pass final orders thereon. In my opinion, in absence of any 'Standing Orders' and / or in absence of any authorization given by the Minister In-Charge to the Principal Secretary for disposal of the matters arising under Section 25(5) of 'the act', the Principal Secretary could not have assumed jurisdiction to adjudicate on the same. The defect in the proceeding is incurable for neither the application addressed to the Principal Secretary in the circumstances discussed above was maintainable nor its disposal by the Principal Secretary despite a ratification by the Minister In-Charge, is capable of removing the defect. The jurisdiction in the Principal Secretary in absence of any standing order or authorization is conformingly lacking rendering the entire proceedings invalid and as a consequence the impugned order of removal becomes unsustainable.

In view of the inherent lack of jurisdiction in the Principal Secretary, Urban Development and Housing Department to pass the order, it would not require this Court to delve into the issues whether the principles of natural justice stands violated. In my opinion, a mere ratification of the proceedings by the Minister In-Charge would not translate the order passed by the Principal Secretary in an order of the State Government. The argument advanced by learned State counsel and Mr. Manglam to justify the impugned order on the anvil that it is an administrative action and not a quasi judicial exercise is also fallacious for the moment an issue is raised by a person questioning the right of the other to continue in office which requires an adjudication upon appreciation of the rival contentions, it cannot be termed an

administrative action rather is a quasi judicial exercise. Even otherwise be it an administrative action or a quasi judicial exercise, if the Principal Secretary is not vested with jurisdiction under 'the act' or the Rules of Executive Business to conduct the proceedings then the nature of proceeding would not make any difference. In fact the only distinctive requirement in the nature of exercise is that whereas an administrative action requires authentication under Article 166 of the Constitution of India, there is no such requirement in a quasi judicial exercise but then in either situation a valid authorization has to be existing. The position stands explained in the judgment of the Supreme Court in the case of State of Maharashtra vs. Basantilal (supra).

In view of the legal position so discussed above, the application filed by the private respondent not being addressed to the proper authority recognized under the rules of Executive Business, was apparently not maintainable and should have been disposed of accordingly.

In result the entire proceedings including the order dated 30.10.2015 passed by the Principal Secretary, Urban Development and Housing Department bearing Memo No. 5454 dated 30.10.2015 impugned at Annexure-1 to the writ petition is held illegal and is accordingly set aside.

The writ application is allowed. Since vide order passed on 26.11.2015 the election to the post of Deputy Chief Councillor had been made subject to the result of this application, hence the consequences shall follow.

S.Sb/-

(Jyoti Saran, J)

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