

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7781 of 2016

=====

Janak Sah, Son of Narsingh Sah, Resident of Ward No. 2, Jamadar Tola, P.O. & P.S.- Bettiah Town, District- West Champaran (Bettiah)

... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
3. The Deputy Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna
4. The District Magistrate-cum-Collector, West Champaran (Bettiah)
5. The Additional District Magistrate-cum-Collector, West Champaran (Bettiah)
6. The Executive Officer, Municipal Council, Bettiah, West Champaran
7. Jahangir Alam, District Secretary-cum-Member of JDU, R/O- Lal Bazar Pakija, Church Road, Bettiah, West Champaran.
8. Anish Akhatar, Ward Commissioner, Ward No. 14, Bettiah nagar Parishad, P.O + P.S.- Bettiah Town, District- West Champaran.
9. The Secretary, State Election Commission, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. S.B.K.Manglam, Advocate.
Mr. S.P.Tripathi, Advocate.
Mr. Ashok Kumar Gupta, Advocate.

For the State : Mr. Nadeem Seraj, G.P-5
For the Resp. No. 6 : Dhananjay Kumar No. 2, Advocate.

For the Resp. No. 7 : Mr. Anil Kumar Verma, Advocate.

For the Resp. No. 8 : Mr. Jagjit Roshan, Advocate.

For the E. Commission: Mr. Amit Shrivastava, Advocate.
Mr. Girish Pandey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 01-12-2016

Heard learned counsel for the parties.

2. The challenge in the writ application is to the order,
contained in Memo No. 2674 dated 20.04.2016, passed by the Principal



Secretary, Urban Development and Housing Department, by which the petitioner has been removed from the post of Chief Councillor-cum-Chairman of the Nagar Parishad, Bettiah.

3. The petitioner, having been duly elected as a Chairman of Nagar Parishad, Bettiah, was charged with certain acts of omission and commission and irregularities, for which a show cause was issued to him by the Government. The same was based on certain enquiries conducted by the officers of the State Government. The petitioner replied to the same and thereafter upon hearing the parties, the order impugned has been passed. Pursuant to the order, fresh elections have also been held for the post of Chief Councillor in which the respondent no. 8 has been elected as Chief Councillor. In view thereof, the Court, by order dated 04.05.2016, had made the election of Chief Councillor subject to the result of the present writ application.

4. Learned counsel for the petitioner submitted that from the entire order, it is apparent that only the allegation against the petitioner and the defence of the petitioner has been noted down but in the last and operative portion at paragraph No. 11 of the order, it has been held that the petitioner is unfit to hold the office in view of various acts of omission and commission and, accordingly, in exercise of power under Section 25(5) of the Bihar Municipal Act, 2007 he was removed from the post of Chief Councillor. Learned counsel submitted



that the law contemplates that any order, which is passed, especially which visits a person with extreme consequences, has to disclose reasons and absence of the same would make the order liable to be set aside. For such proposition, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of ***G. Vallikumari v. Andhra Education Society & Ors.*** reported as ***(2010) 2 SCC 497.***

5. Learned counsel for the State and the State Election Commission as well as the private respondents have supported the order impugned and submitted that the allegations against the petitioner have been found true by a Seven Member Enquiry Committee. It was submitted that much prior to this episode, there were two FIRs against the officers of the Nagar Parishad and in one of the cases, the petitioner was named and is on bail. Learned counsel submitted that the petitioner has committed grave irregularities, for which complaint was made by many persons, including the respondent no. 7 and after following the due procedure prescribed in law, the order has been passed, which is sound, both in law as well as on facts.

6. Having considered the rival contentions, the Court finds the order impugned to be unsustainable, purely on the basis of the principles of settled law, that any such order passed has to disclose the reasons for arriving at the conclusions, which, in the present case, has led to the petitioner being removed from the elected post. From perusal



of the order it is clear that the allegations as well as the defence of the petitioner have been noted down, but there is absolutely no indication as to what has been the consideration for, there is no discussion in the order impugned to this effect. Such requirement cannot be taken lightly or waived, for it is the requirement of law that a person, against whom any order is passed, is entitled to know the reason why his defence has not been accepted and the same is also required for any superior authority or a court law for considering the validity of such order. Non disclosing of the reason tantamounts to non-consideration and is also indicative of non-application of mind.

7. Either way, it is the obligation of a public authority, who is passing a statutory order, in terms of the power conferred by the statute, has the duty to disclose his mind and give the reasoning as to why he has found the defence of a person unacceptable and then only he has the jurisdiction to give his own findings in the background of such consideration. The same have to be written in black and white in the order and cannot be left to be presumed by the parties or to be argued before the forum where such order is challenged. The view of the Court finds support in the decision of the Hon'ble Supreme Court in the case of **G. Vallikumari** (supra), the relevant reading as under:

“19. In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light



of the findings recorded by the enquiry officer, but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned.”

8. For the reasons aforesaid, the order impugned, contained in Memo No. 2674 dated 20.04.2016, passed by the Principal Secretary, Urban Development and Housing Department, Government of Bihar, is set aside. The matter is remanded back for fresh consideration and decision by the Principal Secretary of the Department, in accordance with law after giving fresh opportunity of hearing to the parties, especially the petitioner.

9. The petitioner shall appear before the Principal Secretary, Urban Development and Housing Department, Government of Bihar within two weeks from today, along with a copy of this order when the date shall be fixed for such hearing. Such exercise shall be completed within two months thereafter. The Principal Secretary shall



also hear the complainant and any of the Councillors, who may file a petition for such hearing before him within two weeks from today, along with a copy of this order.

10. If the exercise is not completed by the time frame, as indicated above, it would be open to the petitioner to move the court for appropriate direction.

11. Fresh election held pursuant to the impugned order shall abide by the order to be passed, pursuant to remand, by the Principal Secretary. Till that time, the respondent no. 8 shall not act as Chief Councillor, but shall be entitled to function as a Councillor only.

12. It is clarified that functioning of the Nagar Parishad, Bettiah shall not be disturbed, as only the respondent no. 8 acting in the capacity of Chief Councillor has been kept in abeyance, for the time being.

13. The writ application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	
U	

