

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2294 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 17721 of 2015**

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Amrawati Devi, wife of Sri Dinanath Yadav, Resident of Mohallla- Manik Chand Talab, P.O. Anishabad, P.S. Gardanibagh, District- Patna.

.... Appellant

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 and Justice Department, Government of Bihar.
4. Patna Municipal Corporation through its Chief Executive Officer, 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.
6. Roop Narayan, son of Shri Ram Narayan Prasad, Resident of Mohalla-Mehandiganj, P.O and P.S. Patna City, District-Patna, Bihar.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Vinod Kanth, Sr. Advocate. Mr. S.B.K. Manglam, Advocate. Mr. Ravi Ranjan, Advocate.
For the State	:	Mr. Lalit Kishore, P.A.A.G. Mr. U.S.S. Singh, G.P.-I Mr. R.K. Chandram, A.C. to G.P.-I
For Respondent No. 6	:	Mr. Jitendra Singh, Sr. Advocate. Mr. Piyush Lall, Advocate. Mr. Yash Singh, Advocate Mr. Tej Pratap Singh, Advocate. Mr. Kamal Kishore Singh, Advocate.
For the Corporation	:	Mr. Prasoon Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI, A.C.J.

and

HONOURABLE MR. JUSTICE HEMANT GUPTA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22 -06-2016

The present Letters Patent Appeal is directed against
an order, dated 14th of December, 2015, passed by the learned Single

Bench of this Court in C.W.J.C. No. 17721 of 2015, whereby the writ application filed by Respondent No. 6 removing him from the post of Deputy Chief Councillor-cum-Deputy Mayor of the Patna Municipal Corporation was set aside.

2. The facts, in brief, are that the elections of the Municipal Corporation, Patna, were held in the year 2012 and Respondent No. 6 herein, Roop Narayan, was elected as Deputy Chief Councillor of the Corporation. A complaint was filed by Binod Kumar, Respondent No. 5 herein, seeking removal of Roop Narayan from the post of Deputy Chief Councillor, *inter alia*, on the ground that he has avoided to attend three consecutive meetings of the Empowered Standing Committee and, thus, lost interest in the affairs of the Municipal Corporation. On account of failure to attend three consecutive meetings of the Empowered Standing Committee, it was submitted that Roop Narayan incurred disqualification entailing removal from the post of Deputy Chief Councillor under Section 25(5) of the Bihar Municipal Act, 2007 (hereinafter referred to as “the Act”).

3. Since no action was taken on the complaint, the Respondent No. 5, Binod Kumar, invoked the writ jurisdiction of this Court for directing the respondents to take an appropriate decision on the complaint made by him. This Court disposed of the writ



application on 2nd of February, 2015, with a direction to the Principal Secretary, Urban Development and Housing Department, Government of Bihar, to take an appropriate action in accordance with law after giving an opportunity of hearing to the contesting parties, preferably, within six months of the receipt/production of a copy of the said order. The said order reads as under:-

“The limited grievance raised by the petitioner in this writ petition is that an application filed before the Principal Secretary under Section 25(5) {incorrectly mentioned as 25(4)} of the Bihar Municipal Act, 2007 (hereinafter referred to as ‘the Act’) seeking removal of the private respondent No. 4 remains pending before the Principal Secretary though it was filed on 23.9.2014.

A statutory application filed before the statutory authority requires disposal in accordance with law and cannot be allowed to remain pending and thus considering the limited grievance raised in this writ petition, the present application is disposed of with the direction to the Principal Secretary, Urban Development and Housing Department, Government of Bihar to consider the petition filed on behalf of the petitioner on 23.9.2014, a copy of which is placed at Annexure-6 to the writ petition and dispose of the same in accordance with law and after giving opportunity of hearing to the contesting parties including the respondent No. 4, expeditiously and preferably within six months from the date of receipt/production of a copy of this order.”

4. Since the order, dated 2nd of February, 2015 aforementioned, was not complied with a contempt application was filed. It was during the pendency of the contempt application that a

final order was passed by the Principal Secretary, Urban Development and Housing Department, Government of Bihar, on 30th of October, 2015, whereby Roop Narayan was removed from the post of Deputy Chief Councillor, Patna Municipal Corporation.

5. The argument of the writ petitioner before the learned Single Bench, *inter alia*, was that in terms of Section 25(5) of the Act, an order could be passed only by the State Government and that jurisdiction would vest in the Minister-in-Charge of the Department in view of Rules 5, 11, 21, 22 and 23 of the Rules of Executive Business and the schedule thereto framed by the Hon'ble Governor under Article 166 of the Constitution of India. Learned Single Bench accepted the argument and held that the removal of Roop Narayan is by an authority not authorized by law.

6. Another argument raised was that the meetings, the non attendance of which, led to the removal of the Roop Narayan, are not the meetings of the Municipality, but that of the Empowered Standing Committee. The learned Single Bench did not agree with the argument that failure to attend the meetings of the Municipality alone will not lead to violation of Section 25(5) of the Act. It was held that failure to attend meetings of Empowered Standing Committee also leads to disqualification. The learned Single Bench allowed the writ application on the ground that the impugned order has been issued by



the Principal Secretary, Urban Development and Housing Department, Government of Bihar, and such order cannot be termed as an order of the State Government. Learned Single Bench has held that in terms of the Rules of Executive Business notified by the authorities of the Governor in terms of Article 166 of the Constitution of India, the executive power of the State could be exercised only by the Minister-in-Charge of the Department or in terms of the standing orders issued by the Minister-in-Charge. Since there is no standing order issued and the order has not been passed by the Minister-in-Charge, it is not an order by the State Government.

7. Before examining the respective contentions of the parties, certain provisions of the Statute, relevant issues needs to be examined, e.g., Section 25(5) and Section 44 of the Act, which are reproduced hereinbelow:-

“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 sitting 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 Government may, after giving the Chief Councillor/Deputy Chief Councillor a reasonable opportunity for explanation, by order, remove such Chief Councillor from office.

[Provided that after appointment of Lok Prahari, under section-44, the Government, may pass order under this sub-section only on the basis of recommendation of such Lok Prahari]. (Ins by Act No. 7 of 2011)

8. Learned counsel for the respondents raised a preliminary objection that the Letters Patent Appeal has been filed by a person, who was not party before the learned Single Bench. She is a stranger to the *lis* and not competent to file an appeal against an order passed by the learned Single Bench, more so, when the State has not appealed against the judgment in question. Reliance has been placed over an order passed by the Hon'ble Supreme Court in ***Poonam Vs. State of U.P. & Ors.***, reported in **(2016) 2 SCC 779**.

9. The argument of the learned counsel for the appellant is that she was elected as a Deputy Chief Councillor after removal of Roop Narayan as Deputy Chief Councillor and, therefore, her rights are affected by the order setting aside removal of Roop Narayan. It is also argued that the appeal is by member of the Municipal Corporation and, in a matter of removal of an office-bearer of the Municipality, each of the member of the House would have a right to impugn any decision, which affects the rights of the Municipal Councillors as to who should work on and for the Municipal Corporation. It is further argued that not only the Municipal Councillors, but also any resident of the Municipal



Corporation shall have a right in the matter of the office-bearers, who shall manage the Municipal Corporation. It is submitted that the judgment in **Poonam's** case (supra) deals with the right of allotment of a business site; whereas, the present case pertains to right or management of a Municipality, which cannot be equated as a right of property. The management of the Municipality is in public interest and any person, who has a right to be administrated by the Municipality, would have a right to dispute as to who shall manage the Municipality as well.

10. We have heard learned counsel for the parties on the preliminary objection raised and find no merit in the objection so raised by Mr. Jitendra Singh, Senior Advocate representing Respondent No. 6.

11. The issue, which was examined in **Poonam's** case (supra), was whether a subsequent allottee of a shop is a necessary party in a matter involving allotment of site. In an appeal challenging the order of cancellation of allotment, the Court, *inter alia*, held as under:-

“17. The term “entitled to defend” confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice. The principle of audi alteram partem has its own sanctity but the said principle of natural justice is not always put in strait jacket formula. That apart, a person or an authority must have a legal right or

right in law to defend or assail.”

12. The Court also observed, in **Poonam's** case (supra), that the person, who has been elected in the meantime from amongst the member of the Panchayat Samiti or Sabha in a situation, where Sarpanch or the Chairman is removed and the challenge is by a Sarpanch or Chairman to the order of removal, the Court held that such person is not a necessary party. The relevant extract of the said judgment reads as under:-

“47. Few examples can be given so that the position can be easily appreciated. There are provisions in some legislations pertaining to Gram Panchayat or Panchayat Samiti where on certain grounds the competent authority has been conferred the power to remove the elected Sarpanch or the Chairman, as the case may be on certain counts. Against the order of the Collector, an appeal lies and eventually either a revision or a writ lies to the High Court. After his removal, someone by way of indirect election from amongst the members of the Panchayats or the Panchayat Samiti is elected as the Sarpanch or the Chairman. The removed Sarpanch assails his order of removal as he is aggrieved by the manner, method and the reasons for removal. In his eventual success, he has to hold the post of the Sarpanch, if the tenure is there. The question, thus, arises whether the person who has been elected in the meantime from amongst the members of the Panchayat Samiti or Sabha is a necessary party. The answer has to be a categorical ‘no’, for he cannot oppose the order of removal assailed by the affected Sarpanch nor can he defend his election because he has come into being because of a vacancy, arising due different situation.”



13. We find that the appellant, elected consequent to the vacancy fallen on account of removal of Roop Narayan, is a proper party in the appeal even if she is not a necessary party. She has a right to impugn the decision of setting aside the removal of Roop Narayan to which she, as a Municipal Councillor, has a right being a member of the elected representative body. We find that necessary party to be impleaded as respondent, in an application, stands on a different footing than right to file an appeal aggrieved against a decision, which affects the right of the entire elected body. Therefore, in view of *Poonam's* case (supra), we find that the appellant would have the right to file an appeal against the setting aside of the removal of Roop Narayan. Even otherwise also, any person aggrieved has a right to prefer an appeal under Clause X of the Letters Patent.

14. The argument that the State has not chosen to file an appeal against the order passed by the learned Single Bench and the appellant will, therefore, not have any right to dispute the setting aside of the removal of Roop Narayan is, again, misconceived.

15. Though the State has not filed an appeal, but Mr. Lalit Kishore, Principal Additional Advocate General, submits that State adopts the argument of Mr. Binod Kanth, learned Senior Counsel for the appellant, assailing the order passed by the learned

Single Bench.

16. We do not find that non-filing of appeal by State anyway forecloses the right of an aggrieved Municipal Councillor from disputing the setting aside of removal of the office bearer of the Municipality. A Municipal Councillor has an independent right in the manner of affairs of the Municipal Corporation and how they are conducted and, therefore, omission to filing of appeal by the State has no consequences so as to affect the rights of the appellant.

17. On merits, learned counsel for the appellant refers to a Constitution Bench decision reported in *A. Sanjeevi Naidu etc., etc., Vs. State of Madras and another* (AIR 1970 Supreme Court 1102) to contend that the Minister is not expected to burden himself with day-to-day administration. His primary function is to lay down the policies and programmes of his ministry, while the Council of Ministers settles the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of a Minister. He does it on behalf of the Government.

Relevant extract of the said judgment reads as under:-

“12. The cabinet is responsible to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions.



Similarly an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard-working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well-planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day to day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates.

18. Reference was also made to ***Samsher Singh Vs. State of Punjab and another***, (A.I.R. 1974 S.C. 2192), particularly, paragraph 35 thereof, which reads as under:-

“35. The Scheme was upheld for these reasons. The Governor makes rules under Article 166 (3) for the more convenient transaction of business of the Government of the State. The Governor can not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But that could be



done on the advice of the Council of Ministers. The essence of Cabinet System of Government responsible to the Legislature is that an individual Minister is responsible for every action taken or omitted to be taken in his Ministry. In every administration, decisions are taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the major policies. When a Civil Servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister."

19. Learned counsel for the appellant further argued that Roop Narayan has not objected to the jurisdiction of the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna, to pass an order of removal in response to the show-cause notice issued nor was such a plea raised in the writ application. It is only at the stage of argument that such an argument was raised and, therefore, the appellant is estopped from challenging his removal on the ground that it was not passed by the competent authority.

20. Mr. Jitendra Singh, learned Senior Counsel appearing for Roop Narayan, controverted the argument raised by Sri Binod Kanth and asserted that the Rules of Executive Business, framed by the Governor in terms of Article 166 of the Constitution of India, relates to executive business of the State, which include all



activities excluding only legislative or judicial functions and, therefore, according to Mr. Jitendra Singh, the *quasi-judicial* function, while exercising the power under Section 25(5) of the Act, is required to be discharged only in terms of the rules of Executive Business framed and in no other manner. The rules of Executive Business contemplate such power shall be exercised by the Minister-in-Charge or in terms of the standing orders issued. He refers to the following provisions of the Rules of Executive Business, 1979, framed under Article 166(3) of the Constitution:-

“5. 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.

9. The Council shall be collectively responsible for all advice tendered to the Governor and all executive orders issued in the name of the Governor in accordance with these rules whether such advice is tendered or such order are authorised by an individual Minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the Council or however otherwise.

11. Without prejudice to the provisions of rule 9, the Minister-in-Charge of department shall be primarily responsible for the disposal of the business appertaining to the department.

21. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-Charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister.

22. (1) *Each Minister shall by means of standing orders arrange with the Principal Secretary/Secretary of the department concerned what matters or classes of matters are to be brought to its personal notice. Copies of such standing orders shall be sent to the Governor and the Chief Minister.*

(2) xxxx xxxx

21. After hearing learned counsel for the parties, we find that the issues raised are required to be examined in two parts; first part being whether the powers of the State Government in terms of Section 25(5) read with Section 2(106) of the Act means the Minister-in-Charge or the Principal Secretary to the Government. This question needs to be examined in order to determine whether the *quasi-judicial* order of removal falls within the realm of Executive Business required to be performed in the manner prescribed therein or it can be exercised by the Principal Secretary to the Government. The second part being that if the powers of the State Government have to be exercised by the Minister-in-Charge, whether such power can be exercised only by virtue of a standing order issued under Clause (22) of the Rules or whether approval by the Minister-in-Charge of the order passed by the Principal Secretary to the Government is sufficient delegation in terms of Clause (22) of the Rules.

22. The argument of Mr. Jitendra Singh, learned Senior Counsel for the respondent, is that the executive business of the State excludes legislative and judicial functions and all other functions

including *quasi-judicial* functions will fall within the executive business of the State and, therefore, it is required to be performed strictly in accordance with the provisions of the Rules. Reliance was placed upon ***Gullapalli Nageswara Rao and others Vs. Andhra Pradesh State Road Transport Corporation and another, (A.I.R. 1959 Supreme Court 308)***, wherein it has been held as follows:-

“28. At this stage, the argument hinted at but not seriously pressed, may be noticed. The Rules the Governor is authorised to make, the argument proceeds, are only to regulate the acts of the Governor or his subordinates in discharge of the executive power of the State Government, and, therefore, will not govern the quasi-judicial functions entrusted to it. There is a fallacy in this argument. The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those Rules conform to the principles of judicial procedure.”

23. Reference was also made to the judgment in ***Samsher Singh’s*** case (supra), the relevant extract is reproduced hereinbelow:-

“29. The executive power is generally described as the residue which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123, viz., ordinance making power and all powers and functions of the Governor



except his legislative power as for example in Article 213 being ordinance making powers are executive powers of the Union vested in the President under Art. 53(1) in one case and are executive powers of the State vested in the Governor under Article 154 (1) in the other case. Clause (2) or clause (3) of Article 77 is not limited in its operation to the executive action of the Government of India under Cl. (1) of Article 77. Similarly, clause (2) or clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under clause (1) of Article 166. The expression “Business of the Government of India” in clause (3) of Article 77, and the expression, “Business of the Government of the State” in Cl. (3) of Article 166 includes all executive business.”

24. Article 166 of the Constitution of India provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor; whereas sub-clause (3) of Article 166 of the Constitution of India provides that the Governor shall make rules for the more convenient transaction of the executive business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. We find that the executive actions of the Government, appearing in Article 166, have to be given contextual interpretation. The executive actions, in terms of sub-clause (1) of Article 166 of the Constitution, will exclude only legislative and judicial functions or *quasi-judicial* functions having larger

implications in the State, such as, framing of scheme including policy decisions after seeking objections from the parties concerned. It may not include action against an individual person as it has no semblance of any policy decision binding on the entire State, a hallmark of parliamentary form of democracy.

25. In ***Gullapalli Nageswara Rao's*** case (supra), the Supreme Court was considering Section 68-C of the Motor Vehicles Act, as amended in State of Andhra Pradesh, dealing with preparation of a transport scheme. Such a scheme was required to be given wide publication and after considering the objections, the scheme was to be finalized by the State Government applicable to the entire State. It was while considering such provisions that the Court held, in ***Gullapalli Nageswara Rao*** (supra), that the act of the State Government, in approving the scheme, was in discharge of a *quasi-judicial* function and, therefore, the Government should have given personal hearing to the objectors. Minister-in-Charge was held to be personally responsible in terms of the rules.

26. In ***Samsher Singh's*** case (supra), one of the arguments was that power of the Governor to remove sub-ordinate Judge, under Article 134 read with Punjab Civil Service Rules, cannot be allocated to a Minister as it was incapable of allocation to a Minister. In ***Samsher Singh's*** case (supra), the Court held that it is

fundamental principle of English Constitutional Law that Minister must accept the responsibility for every executive act. In ***Shamser Singh's*** case (supra), the Supreme Court, after considering the judgment in *Sanjeevi Naidu's* case (supra), has observed as follows:-

“35. The Scheme was upheld for these reasons. The Governor makes rules under Article 166 (3) for the more convenient transaction of business of the Government of the State. The Governor can not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But that could be done on the advice of the Council of Minister. The essence of Cabinet System of Government responsible to the Legislature is that an individual Minister is responsible for every action taken or omitted to be taken in his Ministry. In every administration, decisions are taken by the civil servants. The Minister lays down the policies. The Council of Ministers settle the major policies. When a Civil Servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. The officers are the limbs of the Government and not its delegates. Where functions are entrusted to a Minister and these are performed by an official employed in the Ministry's department, there is in law no delegation because constitutionally the act or decision of the official is that of the Minister.”

27. The question is : whether an order of removal of a member of a Municipal Corporation is an executive act of the State, which binds the Council of Ministers. If it is so, only then, the Minister-in-Charge will come into picture.

28. We find that removal of an office-bearer of a Municipal Corporation is not an act, which is required to be approved



by the Council of Ministers inasmuch as it is an act, which does not deal with the concept of collective responsibility of the ministers. It is an act for non-performance of his functions of an individual member of the Municipal Corporation. The Rules are framed for convenient transaction of the business of the Government of the State. Such expression will include only those functions, which are required to be performed by Council of Ministers, such as, policy decisions having large ramification. The policy decisions, which will bind the State on account of the principle of collective responsibility alone require approval of the Minister-in- Charge. The order of removal is not an order required to be authenticated in the name of the Governor. As held in the judgments referred to above, the Minister cannot possibly discharge all functions. A Minister is responsible for preparing and giving effect to the policy decisions, which binds not only his Ministry, but the entire Council of Ministers. Therefore, it will be required to be examined in each case whether a *quasi-judicial* act, required to be performed by the State, would be in exercise of the executive power of the State or it deals with individual cases not relating to any policy decision and, therefore, outside the purview of the executive power of the State.

29. The removal of a member has civil consequences. Therefore, a member cannot be removed unless he is served with a



show cause notice giving opportunity to defend himself. It cannot be a function assigned to a Minister inasmuch as office of the Minister is political in nature and that of the Secretary to the State Government is apolitical. Since the issue is of removal of an elected representative and not leading to any policy decision, the same is required to be exercised by apolitical person, who is free from all bias and prejudices. Therefore, in the context of Section 25(5) of the Act, the powers of the Government are not required to be exercised by the Minister-in-Charge as the Rules have no applicability in relation to removal of a member inasmuch as it does not deal with executive power of the State.

30. In respect of the second question, this Court, in a writ application, had directed the Principal Secretary, Urban Development and Housing Department, Government of Bihar, to consider the petition filed by the complainant and dispose of the same in accordance with law. It is in pursuance of this direction that the Principal Secretary has passed an order after granting opportunity of hearing to the appellant. But before issuing the order, he has sought the approval from the Minister-in-Charge on 19.10.2015. The Minister-in-Charge approved proposal to issue orders on 29.10.2015. It is thereafter that the impugned order has been issued.

31. Rule 22 of the Rules empowers the Minister to



arrange, by way of standing order, with the Principal Secretary concerned as to what matters or classes of matters are to be brought to his notice. Therefore, even if the decision was required to be taken by the Minister in terms of Rules 21 and 22 of the Rules, the fact remains that once the Minister had approved the decision of the Principal Secretary, it was an approval in terms of Rule 22 of the Rules. The standing orders are required to be issued in a class of cases to bring certainty to the affairs of the Department; but in an individual case, the approval of the Minister would mean delegation to the Principal Secretary and, thus, there is compliance of the Rules as well. Though the Rules have been held to be mandatory, the fact remains that the decision approving an order passed by the Principal Secretary by the Minister does not contradict any of the provisions of the Rules; rather, it supplements such Rules. It is well settled that there cannot be any action contradictory to the Rules, but the action can always be supplemented. Therefore, approval by the Minister of an order passed by the Principal Secretary complies with the rigours of the Rules as well and. therefore, in either situation, we find that the order of the learned Single Bench is not sustainable.

32. Another argument, which needs to be noticed is that Roop Narayan has not objected to the consideration of the show cause notice by the Principal Secretary. He has consented to the exercise of

jurisdiction by him. Had he objected at that time, the Principal Secretary, who was acting in terms of the orders of this Court, could have taken a decision to refer the complaint to Minister-in-Charge. Having failed to raise objection at the time of hearing of the show-cause notice before the Principal Secretary, Roop Narayan is estopped to dispute the jurisdiction of the Principal Secretary in passing the order of appellant's removal from the post of Deputy Chief Councillor-cum-Deputy Mayor of the Patna Municipal Corporation.

33. Consequently, the Letters Patent Appeal is allowed and the order, under appeal, passed by the learned Single Bench, is hereby set aside and the writ application is dismissed.

(Hemant Gupta, J)

I. A. Ansari, ACJ :

I agree.

(I. A. Ansari, ACJ)

P.K.P.
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