

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13611 of 2021

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Mukesh Kumar @ Guddu Son of Late Gangadhar Prasad Resident of Thana Road, front of State Bank of India, Jagdishpur, P.O. and P.S. Jagdishpur, District- Bhojpur at Ara, Presently Chief Councilor of Nagar Panchayat, Jagdishpur, P.O. and P.S. Jagdishpur, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Director, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Deputy Director, Directorate of Municipal Administration, Urban Development and Housing Department, Government of Bihar, Patna.
5. The District Magistrate, Bhojpur at Ara, District- Bhojpur at Ara.
6. The Executive Officer, Nagar Panchayat Jagdishpur, P.O. and P.S. Jagdishpur, District- Bhojpur at Ara.
7. Bihar State Election Commission through its Election Commissioner, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B. K. Manglam, Advocate
For the State	:	Mr. Abbas Haider, SC-6
Respondent No. 6	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 20-09-2021 Heard Mr. S.B.K. Manglam, learned counsel for the petitioner, Mr. Amit Srivastava, learned senior counsel for Bihar State Election Commission along with Mr. Abbas Haider, learned SC-6 for the State and Mr. Sanjay Kumar, learned counsel for respondent No.6.

The petitioner had initially filed the present writ application against the show cause notice dated 16.07.2021



purported to be issued under Section 25(5) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') for his disqualification as a Chief Councilor of Jagdishpur Nagar Panchayat. During the pendency of this application, the petitioner has been removed from the post of Chief Councilor by an order passed by the State Government dt. 31.08.2021 on the ground that the petitioner has been convicted under Section 302 read with Section 120(B) of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

Learned counsel for the petitioner submits that the order passed by the State Government under Section 25(5) is without jurisdiction inasmuch as under Section 25(5) of the Municipal Act, the Chief Councilor can be removed from the post for the reasons of his absence without sufficient cause in a meeting for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions and is found to be guilty of misconduct in the discharge of his duties or become physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months.

Learned counsel submits that the grounds as mentioned in Section 25(5) for removal of the Chief Councilor



is clear and only on the grounds mentioned therein, Chief Councilor can be removed by the State Government, however, he submits that under Section 18(1) (g) of the Act, if a person is convicted for a term exceeding six months, that person is disqualified to hold the office in the Municipality and the order under Section 18(2) can only be passed by State Election Commission and not by the State Government. Accordingly, Mr. Manglam submits that impugned order passed by the State Government on the ground of conviction of the petitioner is without jurisdiction and is not sustainable in law.

Mr. Amit Srivastava, learned senior counsel appearing for Election Commission does not dispute the legal position and submits that the order under Section 18(1)(g) of the Act shall be passed by the Election Commission within a period of one week.

Mr. Abbas Haider as well as Mr. Sanjay Kumar, appearing for State and respondent No.6 jointly submit that impugned order has been passed on the instruction of the Election Commission and further it is not disputed that the petitioner has been convicted for life and as per Section 18(1)(g) of the Act, he is disqualified to hold the office even as a Ward Councilor, as such there is no illegality in the impugned order.



Having heard learned counsel for the parties and taking into consideration the relevant provisions of law and fact it is evident that the power to disqualify a Member of the Municipality has been conferred upon the Election Commission under Section 18(2) of the Act, but in the present case, admittedly, Election Commission has not passed the order of disqualification of the petitioner and the same has been passed by the State Government in exercise of power under Section 25(5) of the Act and the petitioner has been removed on the ground of his conviction which is not a ground for removal, as mentioned in Section 25(5) of the Act.

In view of the aforesaid legal position, I find that the impugned order passed by the State Government is not in consonance with the statutory provisions. Accordingly, the same is kept in abeyance till a fresh order in this regard is passed by the Election Commission-respondent No.7 under Section 18(2) of the Act within a week. Since the power exercised by the Writ Court is a discretionary power and the Court may not pass any order which will give rise to a situation that the petitioner, who has admittedly been convicted for life, will be reinstated as Chief Councilor, accordingly, the petitioner shall not be entitled to be reinstated as Chief



Councilor and / or for any other consequential relief upon
keeping the impugned order in abeyance by this Court.

I.A. No.1 of 2021 is, accordingly, allowed.

With the aforesaid observation and direction, this writ
application is disposed.

(Anil Kumar Sinha, J)

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