

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10741 of 2020

1. Ajay Kumar Jalan, Son of Mr. Ramaballabh Jalan, Resident of Bada Bazar, P.O. and P.S.- Darbhanga, District- Darbhanga, Pin Code- 846004.
2. Binod Mandal, Son of Late Ramanand Mandal, Resident of Ward No. 23, Mohalla- Allapatti, P.O.- D.M.C.H., P.S.- Leharisara, District- Darbhanga, Pin Code- 846003.
3. Badruzamman Khan, Son of Late Akhruzama Khan, Resident of Ward No. 43, Mohalla- Benta, Ahila, P.O.- D.M.C.H., P.S.- Leharisara, District- Darbhanga, Pin Code- 848003.
4. Subodh Kumar Vishavkarma, Son of Bhagvan Dayal Sharma, Resident of Raj Kuvar Ganj, Mirzapur, P.O. and P.S. and District- Darbhanga, Pin Code- 846004.
5. Sohan Yadav, Son of Mahaveer Yadav, Resident of P.O. and P.S.- Laxminagar, District- Darbhanga, Pin Code- 846004.
6. Asha Kishor Prajapati, Wife of Asha Kishor Prajapati, Resident of Shahganj Benta, P.O.- D.M.C.Ahila, P.S.- Bahadurpur, District- Darbhanga, Pin Code- 846003.
7. Nusrat Alam, Son of Rafique Ahamd Ansari, Resident of House No. 49, Mohalla- Sarai Sattar Khan, P.O.- Ekmi, P.S. and District- Darbhanga, Pin Code- 846001.
8. Syed Md. Sibghatullah, Son of S.M. Obaidullah, Resident of P.O.- Lalbagh Quila Ghat, Meermanjan P.S. and District- Darbhanga, Pin Code- 846004.
9. Viajanti Devi Kheria, Wife of Shri Om Prakash Kheria, Resident of Banglagadh, P.O.- Lalbagh, Darbhanga, District- Darbhanga, Pin Code- 846004.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Department, Patna, Bihar.
2. Additional Secretary-cum-Deputy Director, Urban Development and Housing Department, Patna, Bihar.
3. District Magistrate, Darbhanga, Bihar.
4. Municipal Commissioner, Darbhanga Municipal Corporation, Darbhanga, Bihar.
5. Bihar Welfare Trust through its Director at Village and P.O.- Sirua, P.S.- Behedi, District-Darbhang, Bihar, Pin Code- 847101.

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr.Abhinav Srivastava, Advocate
For the S t a t e	:	Mr.Yogendra Pd. Sinha, AAG-7
		Mr. Rajeev Kumar Sinha, A.C. to AAG-7
For the Darbhanga Municipal Corporation	:	Mr. Bindhyachal Rai, Advocate



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 18-11-2021

Two notices, both dated 03.09.2020, issued by the Urban Development and Housing Department, Government of Bihar, in exercise of powers under Section 17(4) and 25(5) of the Bihar Municipal Act, 2007 (hereinafter referred to as “the Act”), brought on record by way of Annexures 15 and 16 respectively, are being assailed in the present writ application.

2. Section 17(4) of the Act reads as under :

“17.Recall of Councillor.--(1)

(2).....

(3).....

(4) If a Councillor is found guilty of misconduct in discharge of his duties, or if he is convicted of any such offence, or subjected by a criminal court to any such order as implies moral turpitude which in the opinion of the State Government, renders him unfit to be a Coucillor, he shall be removed by the State Government after giving him an opportunity of being heard.”



Section 25(5) of the Act reads as under:

“25. Removal of Chief Councillor/Deputy Chief Councillor.--(1)

(2).....

(3).....

(4).....

(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.

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.*

(6).....”

3. The petitioners are Councillors/Deputy Chief Councillors of Darbhanga Municipal Corporation, Darbhanga.

4. It is evident from the impugned notices dated 03.09.2020 that they are based on a report submitted by the Divisional Commissioner, Darbhanga, dated 26.10.2019 and that of the Regional Development Officer, Darbhanga Division, Darbhanga, dated 22.08.2019.

5. It is not clear as to whether pursuant to the said notices, the petitioners have submitted their explanations or not. It is, however, not in dispute that no final decision of removal has been taken after issuance of the notices in exercise of the powers conferred under Section 17(4) and 25(5) of the Act.

6. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioners has drawn our attention to the report, which is part of the communication dated 26.10.2019, issued by the Office of the Divisional Commissioner, Darbhanga to the Urban Development and Housing Department, to contend that the said report does not hold the petitioners guilty of any misconduct which is a condition precedent for initiating action under Section



17(4) and 25(5) of the Act. He has further submitted that there cannot be any dispute about the fact that no enquiry was held in the presence of these petitioners and the said report is based on an enquiry conducted behind their back. He has, therefore, submitted that any finding holding the petitioners guilty of any misconduct without an enquiry in their presence is unsustainable. He has also submitted that some of the petitioners were, as a matter of fact, not Members of the Empowered Standing Committee of the Corporation during the period in respect of which misconduct has been alleged and the notices have apparently been issued without any application of mind.

7. In our opinion, language of Section 17(4) and 25(5) of the Act is unambiguous. Section 17(4) of the Act stipulates that if a Councilor is found guilty of misconduct in discharge of his duties, or if he is convicted of any such offence, or subjected by a criminal court to any such order as implies moral turpitude which in the opinion of the State Government renders him unfit to be a Councillor, he shall be removed by the State Government after giving him an opportunity of being heard.

8. Similarly, Section 25(5) of the Act empowers the State Government, if a Chief Councillor/Deputy Chief Councillor is found to be guilty of misconduct in the discharge of his duties



etc., to remove him from such office after giving him an opportunity for explanation.

9. Apparently, before proceeding to initiate an action for removal or recall of a Councillor under Section 17(4) of the Act and for removal of a Chief Councillor/Deputy Chief Councillor under Section 25(5) of the Act, the competent authority must form an opinion that the concerned office-bearer has been found to be guilty of a misconduct warranting action of recall/removal. The said opinion is, however, rebuttable.

10. The extant provisions, as quoted above, stipulate opportunity to be given to the concerned officer-bearers to submit explanation against the said opinion/finding which is to be considered by the State Government objectively. Principle of natural justice is thus implicit in the provisions under Section 17(4) and 25(5) of the Act.

11. Be that as it may, considering the fact that till date no action has been taken against the petitioners, it is observed that if the petitioners submit their explanations within one week from today, in response to the said notices dated 03.09.2020, before the Principal Secretary, Urban Development and Housing Department, Government of Bihar, the same shall be considered and decided, in accordance with law.



12. The application stands disposed of.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

PNM

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

