

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20827 of 2021

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1. Ajay Kumar Jalan son of Mr. Ramaballabh Jalan resident of Bada Bazaar PO and PS- Darbhanga, Dist- Darbhanga
 2. Binod Mandal son of late Ramanand Mandal resident of Ward no. 23, Mohalla- Allapatti, P.O.- D.M.C.H., P.S.- Laheriasarai, Dist- Darbhanga.
 3. Subodh Kumar Vishwakarma son of Bhagvan Dayal Sharma resident of Raj Kuvar Ganj, Mirzapur, PO and PS- Darbhanga, Dist- Darbhanga
 4. Sohan Yadav son of Mahaveer Yadav resident of PO and PS Laxmisagar, Dist- Darbhanga.
 5. Asha Kishor Prajapati wife of Asha Kishor Prajapati resident of Shahganj Benta, PO- D.M.C. Ahila, P.S.- Bahadurpur, Dist- Darbhanga.
 6. Nusrat Alam son of Rafique Ahmad Ansari resident of House No. 49, Mohalla- Sarai Sattar Khan, PO- Ekmi, PS and Dist- Darbhanga.
 7. Syed Md. Sibghatullah son of S.M. Obaidullah Resident of PO- Lalbagh Quild Ghat, Meermanjan, PS and Dist- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Secretary Urban Development and Housing Department Govt. of Bihar, Patna
2. The Special Work Officer Urban Development and Housing Department Govt. of Bihar
3. The Dy. Secretary Municipal Administration Directorate Urban Development Department Govt. of Bihar, Patna
4. The Additional Secretary Cum Deputy Director Urban Development and Housing Department Govt. of Bihar, Patna
5. The Divisional Commissioner Darbhanga Division Darbhanga
6. The Regional Development Officer, Darbhanga Division, Darbhanga
7. The District Magistrate, Darbhanga
8. The Municipal Commissioner, Darbhanga Municipal Corporation Darbhanga, Bihar

... .. Respondents

with

Civil Writ Jurisdiction Case No. 20837 of 2021

1. Viajanti Devi Kheria Wife of Om Prakash Kheria, Resident of Benglagadh, P.O.-Lalbagh, P.S.-Town Dist-Darbhang.
2. Badruzamman Khan Son of Late Akhruzama Khan Resident of Ward no. 43 Mohalla Berta Ahila, P.S.-Laheriasarai, Dist.-Darbhanga.



... .. Petitioners

Versus

1. The State of Bihar through the Secreary Urban Development and Housing Department Govt. of Bihar Patna.
2. The Special Work Officer urban Development and Housing Department Govt. of Bihar.
3. The Dy. Secretary Municipal Administration Directorate Urban Development Departemnt Govt. of Bihar
4. The Dy. Secretary Municipal Administration Directorate urban Development Department Govt. of Bihar, Patna.
5. The Divisional Commissioner Darbhanga Division Darbhanga.
6. The Regional Development Officer, Darbhanga Division, Darbhanga.
7. The District Magistrate, Darbhanga.
8. The Municipal Commissioner, Darbhanga Municipal Corporation Darbhanga, Bihar.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 20827 of 2021)

For the Petitioner/s	:	Mr. Y.V. Giri, Senior Advocate Mr. Ashok Kumar, Advocate Mr. Vibhuti Narayan, Advocate
For the Respondent/s	:	Mr. Prabhat Kumar Verma, AAG-3 Mr. Suma Kumar Jha, Advocate
For Darbhanga Municipal Corporation	:	Mr. Bindhyachal Rai, Advocate
For Bihar State Election Commission	:	Mr. Girish Pandey, Advocate

(In Civil Writ Jurisdiction Case No. 20837 of 2021)

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Y.V. Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-02-2022

The petitioners in CWJC No. 20837 of 2021 were elected as Mayor and Deputy Mayor of Darbhanga Municipal Corporation (for short 'the Corporation') and had assumed



charge on 09.06.2017. Petitioners of CWJC No. 20827 of 2021 were elected as councilors of the Corporation in 2017. An empowered standing committee of the Corporation was constituted on 21.06.2017 with petitioner No. 1 of CWJC No. 20827 of 2021 as its Chairman and the rest of the petitioners as its members.

2. Considering the acts of these petitioners in relation to a decision taken by the said Empowered Standing Committee in its meeting dated 28.05.2019, to be gross misconduct, the State Government of Bihar in the exercise of power under Section 17(4) and 25(5) of the Bihar Municipal Act (hereinafter referred to as 'the Act') has removed them from their respective positions by two separate orders, both dated 06.12.2021, which have been put to challenge in these two applications filed under Article 226 of the Constitution of India.

3. Considering that the factual basis for issuance of the impugned order is the same and the issues involved in both the cases are identical, these applications have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

4. The order contained in memo No. 3538 dated 06.12.2021, issued by the Urban Development and Housing



Department, Government of Bihar, ('the Department' for short) is under challenge in CWJC No. 20837 of 2021, whereby the petitioners of the said case have been removed from the post of Mayor and Deputy Mayor in exercise of power under Section 25(5) of the Act. In CWJC No. 20827 of 2021, the order issued vide memo No. 3539 dated 06.12.2021, issued by the Department whereby the petitioners have been removed from the post of ward councilors of the said Corporation in the exercise of power under Section 17(4) of the Act, is under challenge.

5. Consequential letter No. 5368 dated 09.12.2021, issued by the Municipal Commissioner of the Corporation is under challenge in both the writ applications.

6. We have heard Mr. Y.V. Giri, learned Senior Counsel assisted by Mr. Ashok Kumar and Mr. Vibhuti Narayan, learned advocates for the petitioner, and Mr. Prabhat Kumar Verma, learned Additional Advocate General-3 assisted by Mr. Suman Kumar Jha, learned assistant counsel. Mr. Vindhaychal Rai has represented the Darbhanga Municipal Corporation and Mr. Girish Pandey has represented the Bihar State Election Commission.

7. It is considered apt to notice undisputed facts emerging



from the pleadings on record which culminated into the impugned action taken by the Government of Bihar against the petitioners. The Corporation had issued a notice inviting tender on 10.08.2016 for utilization of Nine Public Toilet Complexes situated within Darbhanga Municipal Area.

8. On the basis of a comparative chart of the offers made by six competing bidders, a letter of acceptance ('LoA' for short) was issued on 23.08.2016 by the Corporation in favour of one Rama Shankar Singh, he having been found to be the highest bidder. He was asked to deposit 50 per cent of the bid amount as stipulated in the said LoA dated 23.08.2016. The settlement was for 3 financial years commencing from 25.08.2016, and the yearly contracted amount was Rs. 22,00,195/- (Rupees Twenty Two Lakh One Hundred Ninety Five Only). A few months before the erstwhile Empowered Standing Committee was going to complete its terms, it authorized the then Mayor to take a decision for grant of concession to the said Rama Shankar Singh in the Settlement amount. Close to the completion of his terms, the erstwhile Mayor allowed the settlee /contractor concession to the extent of Rs. 27,19,008/- (Rupees Twenty Seven Lakh Nineteen Thousand Eight Only) in April 2017. The Municipal



Commissioner, however, did not implement the said decision to grant concession which was taken by the then Mayor, soon before demitting his office.

9. Fresh elections of the Corporation were held in May 2017, in which these petitioners were elected, as has been noted at the outset and an Empowered Standing Committee was constituted. The newly constituted Empowered Standing Committee consisting of these petitioners approved the earlier decision to grant a concession to the contractor and sent a communication to the Department seeking its instructions. It is not denied that in response to a letter dated 17.02.2018, received from the Corporation seeking instructions in relation to grant of concession of a total sum of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) against the amount of settlement, the Department had in its letter dated 17.04.2018, mentioned that ordinarily, it is the responsibility of a bidder to verify the work before bidding and that no Concession is allowed subsequently. The Department asked the Corporation to inform whether the settlement was made on “as is, where is basis”. This is also not denied that another letter dated 22.05.2018, was sent by the Department to the Corporation on the point of the grant of said concession of Rs. 27,19,008/-



(Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only), wherein it was categorically mentioned that claim for grant of concession by the settlee was not legally valid and, therefore, could not be accepted. Despite the two communications dated 17.04.2018 and 22.05.2018, in its meeting held on 28.05.2019, the Empowered Standing Committee consisting of these petitioners decided to grant the concession of the aforesaid amount of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) to the contractor. Consequent to the said decision, the Municipal Commissioner of the Corporation issued a communication on 07.06.2019, giving the benefit of concession. The Conduct of the petitioners as Chairman/Members of the Empowered Standing Committee of the Corporation in granting the concession, in the background of the above-mentioned facts, despite clear guidelines of the State Government, has been treated to be misconduct by the State Government warranting action under Section 17(4) and 25(5) of the Act. Accordingly, invoking the said provisions under Section 17(4) and Section 25(5) of the Act, Show-Cause notices were issued by the State Government on 03.09.2020, seeking their explanation. A subsequent reminder was also sent to them. They submitted their response thereafter. After considering their



response, the orders which are impugned in these applications, have been passed.

10. It would be appropriate to mention here the fact that the concession granted by the Corporation was brought to the notice of the Divisional Commissioner, Darbhanga Division, Darbhanga (respondent No. 5) by way of a complaint, on whose direction an inquiry was conducted by the Regional Development Officer, Darbhanga Division, Darbhanga (respondent No.-6). The Regional Development Officer, Darbhanga submitted his report on 22.08.2019, which was forwarded by the Divisional Commissioner to the Department on 26.10.2019. Upon examination of the said inquiry report dated 22.08.2019, the Department decided to proceed against these petitioners. It is worthwhile mentioning at this juncture that, after the removal of the petitioners of CWJC No. 20837 of 2021, the consequent vacancies have been filled up with fresh elections conducted with the approval of the Bihar State Election Commission. The said newly elected office bearers have not been impleaded as party respondents in these cases. It is also relevant to mention here that petitioners had earlier approached this Court by way of filing a writ petition against the notices issued against them on 03.09.2020, by the



Department for action under Section 17(4) and 25(5) of the Act, registered as CWJC No. 10741 of 2020. The challenge to the notice in the said writ application was on the ground that in the report of the Divisional Commissioner sent to the Department, the petitioners were not held guilty of any misconduct, which is a condition precedent for exercise of power under Section 17(4) and 25(5) of the Act. Noticing the provisions under Section 17(4) and 25(5) of the Act, CWJC No. 10741 of 2020 was disposed of by an order dated 18.11.2021, with the following observations mentioned in paragraphs 9 and 10. Paragraph No. 9 and 10 are being reproduced hereinbelow :-

“ 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 office-bearers to submit an explanation against the said opinion/finding which is to be considered by the State Government objectively. The principle of natural justice is thus implicit in the provisions under Section 17(4) and 25(5) of the Act.”



11. The petitioners had not submitted their explanation to date when the order dated 18.11.2021 was passed. The Court in such circumstance had disposed of the said writ petition with the following liberty and observations :-

“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 the law.”

12. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioners has submitted that the Empowered Standing Committee consisting of these petitioners had merely approved the decision which was already taken by the erstwhile Empowered Standing Committee. He contends that the impugned orders do not take into account, in due perspective, the replies filed by these petitioners to the show cause notices. He has submitted that, if at all, the decision of the Empowered Standing Committee is treated to be illegal, incompetent, or otherwise invalid, at the best; it was an error of judgment that ought not to have warranted an extreme action in the nature of removal in the exercise of power under Section 17(4) and 25(5)



of the Act. He, however, admits that it was a mistake on the part of the members of the Empowered Standing Committee to have taken a decision to grant concession, despite there being a communication made by the Department dated 17.04.2018. He has submitted that there is no evidence available to the effect that the letter of the Department dated 22.05.2018, was ever brought to the notice of the Empowered Standing Committee. He has relied on the Supreme Court's decision in the case of ***Tarlochan Dev Sharma Vs. The State of Punjab and Others*** reported in (2001) 6 SCC 260, ***Sharda Kailash Mittal Vs. State of Madhya Pradesh and Others*** reported in (2010) 2 SCC 319 and ***Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others*** reported in (2012) 4 SCC 407 to convince this Court that the impugned orders are unsustainable for the reason that no case of abuse of power by these petitioners is made out. Further, according to him, for a solitary mistake of such nature, an extreme action of removal is wholly unwarranted and uncalled for. Reliance has also been placed on the Division Bench decision of this Court in the case of ***Sheikh Hassmuddin and another Vs. State of Bihar and Others*** reported in (2015) 3 PLJR 203. He contends that the impugned orders do not disclose proper application of mind and for the said reason also;



they need interference by this Court. He has submitted that immediately after realizing the mistake, Standing Committee in its meeting dated 17.06.2020, took a decision to recover the said amount of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) from the contractor and accordingly, a notice was sent to the contractor to deposit the said amount. As the contractor has failed to deposit the said amount, a proceeding under the Public Demand Recovery Act has been initiated leading to the registration of case No. 21/2019-20. He has further submitted that mere violation of any provision under the Rule will not amount to giving rise to a condition for the exercise of action under Section 17(4) or 25(5) of the Act. He argues that the decision of the Empowered Standing Committee can at the best be said to be an error of judgment. In the absence of any motive or ill will, attributed to the conduct of the petitioners, no case of misconduct is made out against them warranting exercise of power under Sections 17(4) and 25(5) of the Act, he contends.

13. Mr. P.K. Verma, learned Additional Advocate General, *per contra*, has contended that the action of the petitioners in granting huge concession to the contractor who was awarded work after a process of competitive bidding was not a mistake,



rather it was a deliberate act to extend the undue financial benefit to the contractor/settlee for the apparent reasons, despite the specific direction of the Department to the contrary. He has placed reliance on Rule 10(4) of the Bihar Municipal Empowered Standing Committee Conduct of Business Rules, 2010 to contend that it was impermissible for the Committee to have passed a resolution against the directives of the State Government. He has submitted that the decision of the Empowered Standing Committee, of which the petitioners were members, to favour a private contractor, was in utter disregard to the decisions of the State Government dated 17.04.2018 and 22.05.2018. He has further submitted that this writ application deserves to be dismissed also on the ground of non-impleadment of necessary parties, inasmuch as, the persons subsequently elected to the posts of Mayor and Deputy Mayor are necessary parties and have not been impleaded in the present proceeding.

14. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioners, in reply, has submitted that the persons elected subsequent to removal of the petitioners from the posts of Mayor and Deputy Mayor are not necessary parties in the light of Supreme Court's decisions in case of *Poonam Vs. State*



of Uttar Pradesh and Others reported in **(2016) 2 SCC 779**,

paragraph 48 of which reads as under :-

“48. A 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 to a different situation.”

15. We have considered the rival submission made on behalf of the parties and the pleadings available on record. We have noticed such facts which are admitted in the foregoing paragraphs.

16. We find force in the submission made by Mr. Y.V. Giri, learned Senior Counsel in response to the preliminary objection raised by Mr. P.K. Verma, learned Additional Advocate General that the persons elected to the post in question after removal of the petitioners by the impugned orders are not necessary parties in whose absence this writ petition is not maintainable. He has rightly placed reliance on Supreme Court's Decision in the case of ***Poonam Vs. State of Uttar Pradesh and Others*** (supra) as the person elected can neither oppose the order of removal assailed by the petitioners nor they can defend their election because they came into being because of the vacancies arising out of the removal of these petitioners. The aforementioned preliminary objection raised on behalf of the State of Bihar is accordingly rejected.

17. Coming now to the merits of the case, it cannot be denied that the petitioners were put to the show-cause notice before the action was taken against them and they had submitted their explanation in response to the said show-cause notice. The fact that concession was granted to the contractor by the



Standing Committee was not denied by the petitioners in their explanation submitted in response to the show-cause notice. They took a common plea that the concession was sanctioned earlier dated 03.04.2017 by the erstwhile Standing Committee. The said decision of the erstwhile Mayor was approved by the present Standing Committee and it was decided to seek guidelines from the State Government. They took a plea that the Standing Committee had doubts when the decision was taken in its meeting on 18.12.2017, whether it could take such decision for grant of concession or not. Accordingly, the guideline was sought from the Department. They also took a plea that the contractor had submitted a petition before the Department, pursuant to which, the Corporation had received a communication vide letter No. 775 dated 01.02.2019, which did not contain a clear guideline to the Standing Committee.

18. It is evident on the reading of the impugned orders that, they disclose application of mind and consideration of the explanations submitted by the petitioners in the background of the admitted fact that a concession of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) was granted by the petitioners to the contractor despite clear instructions of the Department through its letters dated



17.04.2018 and 22.05.2018.

19. In our view, as the petitioners were given the opportunity to show-cause which they availed after consideration of which the impugned order has been passed, there is no violation of principles of natural justice. We, however, in all fairness to the submissions advanced on behalf of the petitioners, must address the points as to whether the impugned orders can be held to be unreasoned and whether the conduct in relation to which the action against the petitioners has been taken, constitutes misconduct or not.

20. On perusal of the impugned orders, the finding that the concession was granted to the contractors violating norms to extend substantial financial benefit is not in dispute at all. It is rather a fact admitted by the petitioners. It was a unison decision of all these petitioners to grant the concession of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) in the settlement amount which had the effect of extending the irregular financial benefit to the contractor. The decision to grant concession was taken despite a clear direction issued by the Department that they should not grant such concession. The petitioners were, thus, aware that such a concession should normally not be granted. It is no one's case that any of the



petitioners were opposed to the decision of granting concession in favour of the contractor. In such circumstances, the only allegation against the petitioners in the show cause notice was that, by granting an illegal concession to the contractor causing huge financial loss to the Corporation, they committed misconduct.

21. The finding recorded in the impugned order that the concession was granted illegally in the teeth of the communications sent by the State Government cannot be said to be unreasoned. The submission that the orders are unreasoned is therefore rejected.

22. We now come to the question of whether the allegation against the petitioners of granting concession to the contractor in the facts and circumstances of the case can be treated to be a misconduct warranting action under Section 17(4) and 25(5) of the Act. The State Government in its wisdom has considered that such acts do constitute misconduct attracting action stipulated under Section 17(4) and 25(5) of the Act. A question thus arises, as to whether it would be proper for this Court, in the exercise of the power of judicial review under Article 226 of the Constitution of India, on the basis of admitted facts, to take a different view and hold that such act is not a



misconduct?

23. We have noted above the background in which the concession was granted. There was a competitive bidding process in which the settlee had participated and his bid having been found to be the highest, 9 Public Toilets were settled in his favour for three years against the amount of Rs. 66,00,585/- (Rupees Sixty-Six Lakh Five Hundred Eighty Five Only). The petitioners granted concession when the period of settlement was nearing its completion. The grant of concession apparently frustrated the very competitive nature of the bidding process for the settlement since the settlee was granted settlement on the basis of his bid being the highest. However, after settlement, soon before the period of settlement was coming to an end, the decision of the Empowered Standing Committee was taken to grant the aforesaid concession to the settlee. The grant of concession to the tune of Rs. 27,19,008/- (Rupees Twenty-Seven Lakh Nineteen Thousand Eight Only) as against the total amount of settlement of Rs. 66,00,585/- (Rupees Sixty-Six Lakh Five Hundred Eighty Five Only) cannot be considered to be an act of oversight or a mistake. The decision to grant the concession of the substantially huge amount was deliberately and consciously taken jointly by all these petitioners which had



the consequence of extending the undue huge financial benefit to the settlee causing corresponding loss to the Corporation.

24. In such view of the matter, considering the above, the view taken by the State Government that the act alleged against the petitioner of granting illegal concession constituted misconduct cannot be said to be perversely requiring this Court's interference. We are not convinced with the submission advanced on behalf of the petitioners relying on the Supreme Court's decision in case of *Tarlochan Dev Sharma* (supra) that the action of these petitioners cannot be treated to be an abuse of power vested in them. In the case of *Tarlochan Dev Sharma* (supra), the allegation against the President of Rajpura Municipal Council was that he had asked the Executive Officer of the Corporation not to make payment against Fogging Machines which was delivered after completion of a tender process. A plea was taken in that case that because of the inherent defects detected in the machine during the course of using and testing, the machines were returned to the supplier and, therefore, there was no question of payment. The said stand of the President was found to be incorrect. On the basis of circumstantial evidence, the power of removal from the post was exercised by the State Government in that case. The



Supreme Court, dealing with the expression “abuse of power”,
concluded in paragraph 11 as under :-

“11. The expression “abuse of powers” in the context and setting in which it has been used cannot mean the use of power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse or an intentional wrong. An honest though the erroneous exercise of power or indecision is not an abuse of power. A decision, action, or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power that would render a Councilor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is “abuse of his powers or of habitual failure to perform his duties”. The use of the plural — powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of legislative intent. The phrase “abuse of powers” must take colour from the next following expression — “or habitual failure to perform duties”. A singular or casual aberration or failure in the exercise of power is not enough; a course of conduct or a plurality of aberration or failure in the exercise of power and that too involving dishonesty of intention is “abuse of powers” within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by the popular verdict, to be shown exit for a single innocuous action or error of decision.”

25. The Supreme Court decision in the case of **Tarlochan Dev Sharma** (supra) has held that “abuse of power” implies “wilful abuse or an intentional wrong”.



26. In the given facts which are admitted, the Court finds it difficult to accept the submission made on behalf of the petitioners that their unison act of granting concession in the manner noted above cannot be treated to be an intentional wrong. The submission that the alleged act being singular or casual aberration, the harsh action of removal of the petitioners elected to the office of democratic institution is unreasonable and disproportionate, in the light of the decision in case of ***Tarlochan Dev Sharma*** (supra) is not tenable since the conduct alleged against the petitioners cannot be said to be a casual aberration, rather apparently an intentional wrong to illegally favour the settlee.

27. The Supreme Court's decision in the case of ***Sharda Kailash Mittal*** (supra) also has no application in the facts and circumstances of the case, since in the said case, the Supreme Court noticed in paragraph 30 that there was no finding that any loss was caused to the Municipal Body. In the present case, on the other hand, not only that the conduct of the petitioners caused peculiarly loss to the Corporation, they extended undue financial benefit to the settlee.

28. There cannot be any quarrel over the settled legal position that the Municipalities have been conferred



constitutional status, and no action can be taken by the State Government to remove an elected official without following due process of law. The Act has been enacted in conformity with the provisions of the Constitution (74th Amendment Act, 1992) as can be seen from the Preamble of the Act. The said act confers upon the State Government power of removal under Section 17(4) and 25(5). The provisions require giving the elected representative of a local body an opportunity to explain before taking action against him/her of removal under Section 17(4) and 25(5) of the Act. The principles of natural justice have been followed in this case.

29. It is an admitted fact that the petitioners' conduct, apparently against the directives of the State Government and betraying basic logic led to extending the unworthy huge financial benefit to a contractor and causing loss to the Corporation, this Court does not find any reason to take a different view than what has been taken by the respondents by treating such conduct to be a misconduct warranting action under Section 17(4) and 25(5) of the Act.

30. In the light of the above discussions, we do not find any merit in these applications, which are accordingly dismissed.



31. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

I agree.
(Madhuresh Prasad, J):-

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
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