



IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

W.P.(C) No.3887 of 2025

Shanti Manjari Dei

....

Petitioner

Mr. Milan Kanungo, Senior Advocate

-Versus-

State of Odisha & others

....

Opposite Parties

Mr. P.K. Ray, AGA

Mr. S.K. Dalai, Advocate (O.P. No.5)

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF HEARING:10.12.2025

DATE OF JUDGMENT:25.03.2026

1. Instant writ petition is filed by the petitioner challenging the impugned order of removal directed vide notification dated 28th January, 2025 as at Annexure-1 by opposite party No.2 against her from the post of Chairperson, Deogarh Municipality and consequential order i.e. Annexure-2 of opposite party No.2 appointing opposite party No.5 in that post and furthermore, to issue directions to the opposite parties to allow her continuation in such capacity for the remainder of the tenure on the grounds inter alia that such decision is grossly illegal and bad in law and hence, the same is liable to be interfered with and quashed in the interest of justice.

2. The petitioner was elected Chairperson of the Municipality and she was removed by the Government vide Annexure-1. According to the petitioner, the impugned decision of opposite



party No.2 is beyond jurisdiction and uncanny haste was demonstrated by opposite party No.3 in appointing opposite party No.5 in that post under Annexure-2. The contention is that the removal of the petitioner from the post of Chairperson of the Municipality is outrightly an act of arbitrariness, not in accordance with law and hence, illegal. It is pleaded on record that the petitioner contested the election held in the year, 2022 being a candidate of Biju Janata Dal (BJD) and was elected directly as the Chairperson of the Municipality and out of the elected councilors, opposite party No.5 was picked up as the Vice-Chairperson, who was one among them contested as a Councilor sponsored by Bharatiya Janata Party (BJP). The petitioner claims that while discharging her statutory functions with sincerity and diligence since assuming of office as Chairperson of the Municipality, to her shock and utter dismay, was served with a show cause notice dated 11th November, 2024 by opposite party No.2 issued under Section 53 of the Orissa Municipal Act, 1950 (hereinafter referred to as 'the Act'). The said notice was served on the petitioner on 18th November, 2024 with intimation to reply to the same within 21 days, as to why, she shall not be removed from the post of Chairperson of the Municipality on the charges levelled and for having failed to discharge the duties assigned and having acted illegally in contravention of the provisions of the Act and Rules framed thereunder. In response to the show cause notice as at Annexure-3, according to the petitioner, the reply was submitted. The petitioner alleges that Annexure-3 revealed a special inquiry held at the behest of opposite party No.2 on allegations, such as, failure to convene the required



number of meetings of the Municipal Council; allowing execution of works without approval of the Council; and permitting successful bidders of contracts to deposit the bid amount in installments etc. It is further alleged that on the basis of such a unilateral inquiry, the show cause notice as per Annexure-3 was issued and it smacked of a pre-meditated approach to illegally remove the petitioner from a democratically elected post. The contention is that on a cursory perusal of the notice, it is amply made clear that the Authority concerned had already formed an opinion that the continuance of the petitioner would be detrimental to the interest of the inhabitants of the Municipality. It is claimed by the petitioner that the special inquiry report and a copy of the same were never served on her and she was unaware of the materials collected during the inquiry held clandestinely. The further contention is that the charges levelled against the petitioner by itself not sufficient to remove her from the post of Chairperson of the Municipality. The petitioner alleges that the reply to the show cause was not considered by the concerned Authority nor a proper inquiry was held before such removal was ordered. Referring to the show cause reply as at Annexure-4 series, it is contended that reasonable explanation was offered against each of the charges but it has not been duly appreciated nor a request for a proper hearing was heeded to and therefore, the entire exercise is vitiated and while claiming so, the copies of the correspondences as at Annexures-5 and 6 series have been referred to. It is alleged that the decision to remove the petitioner is pre-planned and the exercise undertaken is merely an empty formality,



inasmuch as, it is in violation of principles of natural justice and fairness for the fact that the show cause reply was not at all dealt with. The petitioner finally pleads that a no-confidence motion was initiated against opposite party No.5 and therefore, the action has been followed against her as a counterblast and with inquiries conducted and on receipt of reports thereafter and that the decision vis-à-vis removal has arrived at when all the charges are groundless. Since, there has been no disobedience of the provisions of the Act and Rules or for that matter, she has not acted in contravention thereof as contemplated under Section 53 of the Act, the contention of the petitioner is that the impugned orders under Annexures-1 and 2 cannot be sustained in law, all the more when, she has been denied a fair and proper opportunity to defend herself.

3. Defending the action, opposite party No.3 filed counter affidavit and it has been pleaded therein that various allegations were received against the petitioner like the Council meetings have not been held regularly and contract works were being executed by the Municipality without the resolution of the Council and about revenue loss to the Municipality due to violation in the terms and conditions of tender relating to the lease of Sairat and in the publication of final list of public works under MUKTA Scheme and for that, the administrative approval was obtained and therefore, it was followed by an inquiry at the Government level ultimately leading to the order of removal i.e. Annexure-1 and since post-removal, the office was lying vacant, hence, opposite party No.5 being the Vice-Chairperson was directed to perform the



duties of the Chairperson as and when occasion arises and such a decision has been taken in exercise of powers conferred under the Act and therefore, the contention alleging that the action is arbitrary and illegal deserves no merit. It is also pleaded that during the period of incumbency of the petitioner, an inquiry was held by opposite party No.3 and in course of such inquiry, the illegalities were noticed and it has resulted in revenue loss to the Municipality. The inquiry also revealed that the annual action plan and project list under MUKTA Scheme needed approval of the Council in view of the guidelines issued by the Government but it was not adhered to and the projects were executed, hence, on the basis of report received from opposite party No.3 vide Annexure-B/3 series, the charges levelled against her were found proved. In so far as the grievance of the petitioner is that she has not been provided reasonable opportunity of hearing, it is further pleaded that such claim is incorrect and totally false, since consequent upon the inquiry conducted by opposite party No.3, a report was received and when such inquiry directed by the Government was notified in Odisha Gazette as per Annexure-A/3 and findings of the inquiry are based on facts and duly communicated by opposite party No.2 vide Annexure-A/3 followed by a copy of the report being supplied to the petitioner on an application received under the RTI Act. It is also pleaded that the plea of political rivalry alleged against opposite party No.5 and any such illegal activities alleged against him during her incumbency were never brought to the notice of the Government by the petitioner and it has also not been proved. As further pleaded, the Council's meeting could



not be held due to the unlawful intervention of opposite party No.5 in cahoots with like-minded Councilors as is alleged is false and that apart, at no point of time, she called for explanations from the Executive Officer of the Municipality for any illegalities and therefore, there has been no violation of the provisions of Section 63 of the Act. With the above facts pleaded, according to opposite party No.3, the defence of the petitioner is baseless and hence, liable to be rejected dismissing the writ petition in limine.

4. Section 53 of the Act stipulates that at any time during the term of the office of the Chairperson or Vice-Chairperson, anything brought to the notice of the Government about them having willfully omitted or refused to carry out or disobeyed the provisions of the Act, Rules, By-laws, Regulations or lawful orders issued thereunder, an inquiry may be directed with a notification issued by it in that regard. In terms of sub-section (2) of Section 53 of the Act, on receipt of report from the Inquiring Officer, the Government shall provide an opportunity to the Chairperson or Vice-Chairperson, as the case may be, to submit an explanation within a period of three weeks. Such explanation shall have to be submitted to the Government through the Inquiring Officer as further stipulated therein. Regard being had to the nature of allegations received by the Government received in the manner prescribed under sub-section (1) thereof and after considering the report and explanation together with comments, if any of the Inquiring Officer and on being satisfied that the incumbent has failed to discharge duties of the office or has acted illegally or in



contravention of any of the provisions of the Act, Rules, Regulations, By-laws etc. shall by a notification issued remove him exercising powers under sub-section (3) of Section 53 of the Act. On a reading of the above provision, it would suggest that the Government has the power to remove a Chairperson or Vice-Chairperson of a Municipality with an inquiry held through the District Magistrate or an Officer not below the rank of a Deputy Secretary of the Government and upon receiving report of such inquiry, providing an opportunity to submit explanation with the comments received from the Inquiring Officer, may proceed to remove him from the post on a satisfaction reached at that he who has been proceeded with has deliberately did the mischief and failed to discharge the duties in contravention of the Act and Rules or such other By-laws, Regulation etc. or where it is proved that there has been disobedience of lawful orders of the Government issued.

5. According to opposite party No.3, the petitioner was well aware of the report of the inquiry held as it was supplied to her upon receiving an application under the RTI Act. The contention of opposite party No.3 is that the petitioner was allowed to respond to the inquiry report and after a proper hearing was held, it was followed by the order of removal vide Annexure-1, which is justified and in accordance with law.

6. Heard Mr. Kanungo, learned Senior Advocate for the petitioner, Mr. Ray, learned AGA for the State and Mr. Dalai, learned counsel for opposite party No.5.



7. Mr. Kanungo, learned Senior Advocate for the petitioner would submit that neither the inquiry report was supplied of the petitioner nor a proper hearing was held by the Authority and on the basis of findings of such an inquiry, the order of removal was directed. In so far as the charges levelled against the petitioners are concerned, the same are related to the regular functions of the Municipality as the Chairperson and there is nothing on record to show that she acted deliberately or intentionally in contravention of the provisions of the Act and Rules, hence, any such action under Section 53 of the Act is outrightly illegal as further contended. That apart, according to Mr. Kanungo, learned Senior Advocate, the Government was pre-determined to remove the petitioner from the post of Chairperson of the Municipality, which is clearly evident from the show cause notice itself, as it was based on a special inquiry with a satisfaction reached at that her further continuance in such capacity would be detrimental to the interest of the inhabitants of the Municipality. It is contended that the entire exercise has been just a formality as the Government had already taken a decision on removal of the petitioner and therefore, the impugned order at Annexure-1 is illegal and also not in consonance with law and in the manner envisaged under Section 53 of the Act. It is further contended that the explanation of the petitioner is reasonable and there has been no willful violation of the provisions of the Act and Rules or disobedience of the Guidelines of the Government or a case of seriously failing in discharging the duties assigned to her and therefore, the Government was not right and justified to initiate any such action leading to issuance of notification



vide Annexure-1 directing her removal by exercising jurisdiction under Section 53 (3) of the Act.

8. On the contrary, Mr. Ray, learned AGA for the State submits that in view of the nature of allegations and charges levelled and that it was followed by an inquiry by opposite party No.3 and upon receiving the report of such inquiry, the Government having taken a decision to remove the petitioner after a special enquiry conducted and when it was followed by a hearing in accordance with Section 53(2) of the Act, there has been no illegality as such and therefore, the decision vide Annexure-1 calls for no interference. It is contended that the petitioner was to have totally failed in discharging her duties and responsibilities as the Chairperson of the Municipality to be undertaken as per the provisions of the Act, Rules and Guidelines and on proof of the same with a special inquiry held, she was removed. Unlike any other administrative inquiry, according to Mr. Ray, learned AGA, upon hearing of the petitioner and providing her an opportunity to respond to the allegations that the Government has taken a decision and directed the removal order vide Annexure-1, which is, therefore, not to be tinkered with.

9. Mr. Dalai, learned counsel for opposite party No.5 justifies the action of the Government against the petitioner in view of the charges against her and for having failed in discharging the functions as the Chairperson of the Municipality necessarily to be performed and discharged according to the provisions of the Acts and Rules. In exercise of powers under Section 53(3) of the Act and with an inquiry held, the Government on a



subjective satisfaction reached at directed removal of the petitioner and it was followed by Annexure-1 and hence, the action is in consonance with the provisions prescribed under the Act and therefore, according to Mr. Dalai, learned counsel, the challenge to the decision of the Government under Section 53 thereof deserves no merit.

10. No doubt, the Government in exercise of power under the Act possesses the authority to remove the Chairperson or Vice-Chairperson of a Municipality, only if, it is established that there has been willful or deliberate omission or refusal to carry out any such orders of the Government or in complying the provisions of the Act and Rules. In order to ensure that the provisions of law are followed and it is not violated intentionally, such power of removal of a Chairperson or Vice-Chairperson of the Municipality has been conferred on the Government under Section 53 of the Act. But at the same time, it is not to be lost sight of the fact that the Municipality is an institution of self-governance. Any such removal of an elected representative to the Municipality by democratic means and mandate shall have to be under the circumstances described in Section 53 of the Act with a show cause invited followed by an action. If the Government finds that there has been intentional or deliberate disobedience or violations of the provisions of the Act and Rules by the Chairperson or Vice-Chairperson, then the power under Section 53 of the Act is to be exercised. According to the Court, an elected representative must have to be allowed to discharge the functions for the full tenure and shall be subjected to action and removal only when



there is any such disobedience alleged and it is found to be deliberate. Save and except under the circumstances enumerated in Section 53 (1) of the Act, any such office bearer of an institution of self-governance should be allowed to perform and discharge the functions as a representative of the people without any hindrance and his removal shall be peremptory for willful disobedience and not otherwise. Any such action for mere wrong decisions is beyond the confines of Section 53 of the Act and it would result in mockery of a democratic system of governance of institutions. In fact, in the humble view of the Court, any decision by the Government overlooking the very objective of Section 53 of the Act is certainly to torpedo the concept of local self-governance, which has now been constitutionally recognized under Part IX-A of the Constitution of India and therefore, it is rightly alleged that any such excessive and disproportionate intervention with the functions of an elected local body would militate against decentralization, autonomy and democratization, which are the basic framework of 74th Amendment to the Constitution. It is also correct to allege that exercise of power under Section 53 of the Act if not in terms thereof for any willful violations of the Act and Rules or disobedience of the lawful orders issued thereunder, it would virtually equate the executive interference with the functions of the local bodies negating their autonomous character.

11. In the case at hand, show cause notice was issued as per Annexure-3 detailing therein the result of an inquiry and receipt of report of such inquiry and the illegalities committed



by the petitioner as the Chairperson of the Municipality. Even a special inquiry was held by the Government in that regard so revealed in the notice with an opinion of the Government that it was satisfied that any such further continuance of the petitioner as Chairperson would be detrimental to the interest of the local inhabitants of the Municipality. Section 53 of the Act does not prescribe any such procedure and the manner in which an inquiry is to be held against Chairperson or Vice-Chairperson of the Municipality. But, according to the Court, general principles of Administrative Law and the requirement of natural justice are to govern the proceedings under Section 53 of the Act and therefore, a copy of the inquiry report shall have to be supplied to the incumbent against whom, the action has been initiated and also to allow him a reasonable opportunity to defend before the Government directs his removal in terms thereof. No doubt, Section 53 (1) of the Act allows the Government to initiate an inquiry but only for willful disobedience of the provisions of the Act and Rules.

12. While the statute mandates an inquiry, in the considered view of the Court, the principles of audi alterem partem are required to be sacrosanctly observed. No order detrimental to a person's position can be passed without giving him a reasonable opportunity of being heard and to make the hearing meaningful, the incumbent must be provided a copy of the inquiry report so as to let him know the findings and evidence collected against allowing to submit a reply to such findings. According to the Court, similar though not identical procedures in disciplinary or administrative actions reinforce



that a person has the right to be heard not only during the inquiry but also at the stage when the findings are considered and therefore, it is mandatory to provide a copy of the inquiry report before taking a final action under Section 53 of the Act.

13. In the present case, a copy of the inquiry report was managed by the petitioner under the RTI Act. A special inquiry has been held by the Government as revealed from Annexure-3. Nothing is borne out of the record as to if a copy of the said report or findings of the enquiry was supplied or made known to the petitioner. Rather, the petitioner upon receiving the show cause notice as per Annexure-3 and in view of the allegations levelled furnished a detailed reply with supporting documents as per Annexure-4 series. According to the Court, a copy of the special inquiry report was also to be provided to the petitioner. That apart, even at the initial stage, when the show cause notice was issued vide Annexure-3, the Court finds that the Government was already satisfied that the further continuance of the petitioner as the Chairperson would not be in the best interest of the local inhabitants of the Municipality. It may therefore be rightly said that the Government had formed an opinion beforehand and hence, the action was pre-determined.

14. As regards, the impugned notification at Annexure-1, it does not reveal as to if each and every response to the charges framed was duly considered and still there was a conclusion at the end that the action under Section 53 of the Act is necessary for willful violation of the provisions of the Act and Guidelines issued by the Government. At the cost of the



repetition, it is to be reminded that an action thereunder directing removal of Chairperson or Vice-Chairperson of the Municipality shall follow suit only if there is willful violation or disobedience of the provision of the Act and Rules and not just for dereliction in duty. If for each and every irregularity, action under Section 53 of the Act is initiated, it would not be in consonance with the law since any such power exercised by the Government conferred is only to meet a situation where there is deliberate act of disobedience or willful violation of the provisions of Act or for not following the lawful orders issued. In the view of the Court, every irregularity or violation is not covered by Section 53 of the Act. In that case, if on a drop of a hat alleging illegalities, action is being taken under Section 53 of the Act by the Government, it would result in chaos and would greatly destabilize the institution. Only deliberate violation or disobedience or any such willful refusal to carry out the provisions of the Act and Rules or orders is to be dealt with under Section 53 of the Act and the notification at Annexure-1 does not reveal any such deliberate or willful conduct of the petitioner demanding action and her removal.

15. Negligence is generally not considered willful conduct as it usually stems from carelessness or failure to exercise reasonable care rather than intentional wrongdoing, however, extreme forms of negligence may blur the thin line by demonstrating a conscious, reckless disregard for the consequences to follow. A willful misconduct in relation to a person shall mean intentional wrong that evinces a reckless indifference to the consequences. A willful and wanton



negligence implies that an individual knew that the risks would follow the consequence in utter disregard of the legal duties to be performed.

16. In so far as the charges levelled against the petitioner is concerned there has been a detailed explanation received from her and on a reading of the reply to the show cause notice at Annexure-4 series, the same appears to be not unreasonable. As to why, the regular meetings of the Council of the Municipality could not be held has also received an explanation. It has been alleged that the faction led by opposite party No.5 created obstacles for the petitioner to perform and to hold the Council meetings regularly and smoothly. The Council meetings are to be held routinely in terms of Section 63 of the Act and it shall to be conducted at least once in every month presided over by the Chairperson of the Municipality. According to the petitioner she did not receive the kind of support from opposite party No.5 and other Councilors backed him and hence, the Council meetings of the Municipality on a regular basis could not be held. Such other reasons are assigned by the petitioner besides the above while explaining the difficulty in holding the Council meetings, which according to the Court, cannot be lost sight of when the representatives do have affiliation of two different political parties and even in strength. As regards, the Tender Call Notice and the works executed, according to the petitioner, it was challenged in W.P.(C) No.19535 of 2022 by one of the Councilors but it was dismissed by this Court and the same was in relation to the auction of Sairat sources, which is one of



the charges against her alleging illegalities. The contention of the petitioner as made to reveal from the reply that the successive bidders were allowed to deposit the balance amount in installments and it was approved by opposite party No.4 and in regular course endorsed by her being the Chairperson of the Municipality. Rightly or wrongly a decision was taken allowing the bidders to deposit the amounts installment-wise and there could be a debate as to whether it was an intentional act or otherwise but on such a ground, the considered view of the Court is that it would not be justified to allege intentional wrongdoing for an action under Section 53 of the Act. Regarding the annual action plan and project lists under MUKTA Scheme, the allegation against the petitioner is that the same did not receive the approval of the Council of the Municipality. In reply to the above, the petitioner referring to the Scheme itself pleaded that the final list of public works is placed in the Council for administrative approval, as the same can be obtained in a phase-wise manner without waiting for preparation of the plan and estimate of all the works to avoid delay in its execution. The Court, considering the charges and discussions hereinabove, is of the conclusion that an explanation was offered by the petitioner but it has not been considered by the Government, which was instead influenced by the special inquiry held and the report of opposite party No.3. That apart, nothing is attributable to the petitioner that she while performing the functions as the Chairperson did anything wrong or did commit any acts of illegalities fully knowing the consequences in utter disregard to the provisions of the Act and Rules. If there has been failure in discharging



the responsibilities assigned but without any willful act or omission or disobedience in following the provisions of the Act and Rules being proved and established, for the nature of allegations for which the inquiry was set into motion and finally culminated in the removal order, in the ultimate view of the Court, it cannot lead to an action under Section 53 of the Act. So, therefore, when the inquiry report was not supplied to the petitioner nor a meaningful inquiry was held by the Government upon receiving reply from him to the show cause notice as per Annexure-4 followed by a decision with a speaking order upon a satisfaction that the illegalities noticed in course of such inquiry proved her willful disobedience of the provisions of the Act and Rules implying an action under Section 53 of the Act, the action with the notification vide Annexure-1 cannot be sustained in law.

17. The Court is inclined to cite a decision of this Court in **Lingaraj Sahu Vrs. State of Orissa 1990 (I) OLR 44**, wherein, it has been concluded that irregularity cannot be considered sufficient and adequate justification for the removal of an elected representative of the people from Office. Again, the Court is inclined to reproduce the view of this Court in above decision, which is as to following that it is not appropriate that an elected representative is removed from office on trivial infractions; if the standard that has been utilized against the petitioner is applied to all and sundry, perhaps none would go unscathed; there would be very few who would not be tarnished by the brush; but there is a difference between irregularities and illegalities and when the



consequence is removal from office and especially when it is an elected office, there should be care and circumspection while taking action; the Executive should not tinker with an elected office; the mistake may be accidental or unintentional, only when the mistake is willful or deliberate, action may be taken. In view of the decision (supra), it has to be concluded that action under Section 53 of the Act depends on a willful misconduct and not for each and every infraction, hence, in absence of any such conclusion reached at, the order of removal of the petitioner vide notification at Annexure-1 suffers from legal infirmity, hence, deserves to be interfered with and set at naught.

18. Accordingly, it is ordered.

19. In the result, the writ petition stands allowed. As a logical sequitur, impugned order of removal directed vide notification dated 28th January, 2025 as at Annexure-1 by opposite party No.2 is hereby set aside with a direction to restore the petitioner in the post of Chairperson of Deogarh Municipality duly notifying the same thereby discharging opposite party No.5 from its responsibility at the earliest soon after receiving a copy of this judgment.

(R.K. Pattanaik)
Judge

Balaram