IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR **W.P.(C) No.25779 of 2025**

Suvendu Kumar Sahoo **....** **Petitioner**
Mr. U.K. Samal, Advocate

-Versus-

State of Odisha & others **....** **Opposite Parties**
Mr. P.K. Sahoo, ASC
Mr.S. Palit, Senior Advocate for Intervener
Mr. A. Das, Advocate for Interveners

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF HEARING:18.11.2025
DATE OF JUDGMENT:26.02.2026

1. Instant writ petition is filed by the petitioner challenging the impugned notice dated 18th June, 2025 as at Annexure-1 and the notification dated 9th September, 2025 under Annexure-6 regarding his removal from the post of Chairperson, Bhuban NAC on the grounds inter alia that the decision thereon by opposite party No.1 is arbitrary and illegal and therefore, the same is liable to be interfered with and quashed in the interest of justice.

2. The petitioner is the Chairperson of the Notified Area Council (NAC), Bhuban questions the legality in the exercise of jurisdiction by opposite party No.2 and the notification at Annexure-6 under Section 53 of the Odisha Municipal Act, 1950 (hereinafter referred to as 'the Act'). By the said notification dated 9th September, 2025, the

petitioner was removed as the Chairperson of the NAC with immediate effect.

3. According to the petitioner, the State Election Commission, Odisha issued a notification on 25th February, 2022 for the conduct of General Election of the Urban Local Bodies within the State including Bhuban, NAC and in that election, he was a candidate for the post of Chairman with other Councilors participated therein, sponsored by Biju Janata Dal. The election was conducted on 24th March, 2022 for the post of Chairman and fifteen Councilors for Bhuban NAC and result of the same was declared on 26th March, 2022 and as further pleaded, he was declared elected besides eight Councilors and thereafter, on 30th March, 2022. As per the petitioner, from the date of constitution of the Council, he has performed the duties and functions assigned under the Act to the satisfaction of all concerned and sincerely looked after the developmental works within the limits of Bhuban NAC. In the meantime, three Councilors elected as party candidates of Biju Janata Dal tendered their resignation from primary membership and intimated the same to the President of the party. With such other facts pleaded regarding voluntary resignation of the Councilors and besides the disqualification proceeding pending before the State Election Commission, the petitioner pleads that he filed W.P.(C) No.27345 of 2024 challenging the notice of the no-confidence motion and for a direction to keep such exercise in abeyance till the proceeding on disqualification is concluded and therein, an interim order dated 11th

November 2024 has been passed not to declare and publish its result without the leave of the Court. During that time, the notice as per Annexure-1 was issued and served on the petitioner with an action initiated under Section 53 of the Act and it has led to the issuance of the impugned notification under Annexure-6.

4. The notice dated 18th June, 2025 and notification have been challenged by the petitioner on the ground that the proceeding has not been conducted in the manner contemplated under the Act and besides that, the charges levelled against him are not acts of mischief cognizable in terms of Section 53 of the Act. The contention is that the petitioner has not been provided a fair amount of opportunity despite the order in W.P.(C) No.19738 of 2025, inasmuch as, a copy of the enquiry report prepared and sent to the Government by opposite party No.3 was not supplied to him. It is contended that before any such action by opposite party No.1, the petitioner ought to have been given a copy of the report to let him know the materials received during such enquiry proving willful negligence and misconduct by him while discharging the functions as Chairman of Bhuban NAC and for a proper defence and having not done so, the notification at Annexure-6 with his removal from the post is illegal and hence, deserves to be set at naught.

5. Perused the counter affidavit filed by the opposite parties through opposite party Nos.1 & 2, whereby, the issuance of

notice as per Annexure-1 and removal of the petitioner as Chairman of Bhuban NAC has been justified. It has been pleaded therein that the petitioner has been provided an opportunity of personal hearing by opposite party No.1 and after careful consideration of the enquiry report of opposite party No.3 and on subjective satisfaction arrived at regarding willful contravention of the provisions of Act and that he failed to discharge the duties and obligations thereunder, the action has been taken followed by the notification (Annexure-6) and therefore, it is not to be tampered with.

6. Heard Mr. Samal, learned counsel for the petitioner, Mr. Sahoo, learned ASC for the State, and Mr. Palit, learned Senior Advocate and Mr. Das, learned counsel for the interveners.

7. Mr. Samal, learned counsel for the petitioner submits that the notice under Annexure-1 itself is invalid since was issued by opposite party No.2. The contention is that opposite party No.2 does not have the competence to issue any such notice to the petitioner. Besides the above, the contention is that the petitioner has not been provided reasonable opportunity of hearing in terms of the direction of this Court in W.P.(C) No.19738 of 2025. The contention is that the petitioner was not supplied with a copy of the enquiry report of opposite party No.3 received by the Government, hence, there has been violation of principles of natural justice, relying upon which, he has been removed

from the post of Chairmanship. The submission is that opposite party No.1 was under obligation to provide a copy of the enquiry report to the petitioner to enable him to defend properly. Mr. Samal, learned counsel would submit that the petitioner cannot and could not have been removed as the Chairman of Bhuban NAC for mere negligence in duty as there has been no willful default or omission or disobedience in complying with the provisions of the Act, the fact which was completely lost sight of by opposite party No.1. The contention of Mr. Samal, learned counsel is that neither was the petitioner allowed to defend the proceeding properly nor was any such inquiry report supplied to him and therefore, the notice as per Annexure-1 and the notification vide Annexure-6 are liable to be quashed. It is contended that the petitioner is a directly elected Chairman of the NAC, hence, an elected representative and therefore, it was obligatory on the part of the Government to consider his removal in strict compliance of the provisions of the Act and only upon satisfaction that, there has been deliberate or willful default on his part, while discharging the functions as the Chairman of the NAC. In absence of any such satisfaction arrived at, it is lastly contended that the impugned decision followed by the notification at Annexure-6 cannot be sustained in law.

8. Mr. Sahoo, learned ASC for the State, on the other hand, submits that the decision of opposite party No.1 on the action initiated under Section 53 of the Act is in accordance with law leading to the removal of the petitioner as the

Chairman of the NAC for the reason that he has been found grossly negligent and misconducted himself in discharging the responsibility assigned to him. The further contention is that as per the Act, notice under Annexure-1 was issued to the petitioner and it was followed by an enquiry with a report received from opposite party No.3 and followed by the decision for his removal on a satisfaction reached at by opposite party No.1. Mr. Sahoo, learned ASC contends that the petitioner is guilty of severe negligence in discharging the duties as the Chairman of the NAC and in that connection, opposite party No.2 on behalf of the Government issued the notice as per Annexure-1 and therefore, the challenge to the same on any such ground that the authority concerned is incompetent is wholly misconceived. Lastly, it is contended that the decision under challenge to the notification as per Annexure-6 at the behest of the petitioner is not to be entertained as the provisions of the Act have been duly complied with and the proceeding having been properly constituted.

9. Mr. Palit, learned Senior Advocate for the intervener would submit that the notice under Annexure-1 is valid as it was issued by opposite party No.2 for a reply and response from the petitioner. It is contended that a complaint was received from some of the Councilors against the petitioner, consequent upon which, an enquiry was commenced with the issuance of the notice calling upon him to submit an explanation and thereafter, considering the enquiry report, opposite party No.1 being satisfied about the willful default

and negligence on the part of the petitioner directed his removal followed by Annexure-6. Regarding the supply of a copy of the enquiry report to the petitioner, according to Mr. Palit, learned Senior Advocate, the Act does not subscribe to it, inasmuch as, Section 53 of the Act thereof allows the Government to take a decision upon receiving such a report from the Enquiring Officer along with the explanation submitted by the Chairperson or Vice- Chairperson, whosoever, against whom the action has been initiated. The contention is that unlike any other judicial or quasi-judicial proceeding, there is no need to provide a copy of the enquiry report, as the mandate of law only obligates inviting an explanation on the charges levelled and a decision thereafter. Mr. Palit, learned Senior Advocate argued that upon any complaint received, the Government directs an enquiry and after receiving the enquiry report, it provides an opportunity to the Chairperson or Vice-Chairperson to submit explanation within the period stipulated under the Act, which does not mean that a copy of such report is to be mandatorily supplied to them and therefore, no any wrong or illegality has been committed in course of the proceeding by opposite party No.1 and hence, on such ground, the petitioner cannot be allowed to challenge his removal and question the notification vide Annexure-6. Recorded the submission of Mr. Das, learned counsel for the interveners.

10. In course of hearing, Mr. Samal, learned counsel for the petitioner cited the following decisions, such as, **Somanath Prusty Vrs. Director of Textiles, Orissa & others 1991**

SCC OnLine Ori 140; **Ravi Yashwant Bhoir Vrs. District Collector, Raigad & others (2012) 4 SCC 407**; **Lingaraj Sahu Vrs. State of Orissa 1990 (I) OLR 44**; **S. Sundaram Pillai & others Vrs. V.R. Pattabiraman & others (1985) 1 SCC 591**; and **Mohinder Singh Gill & another Vrs. The Chief Election Commissioner, New Delhi & others (1978) 1 SCC 405** to contend that the entire exercise stands vitiated for the non-compliance of the provisions of the Act, hence, the notification as per Annexure-6 is liable to be quashed.

11. The allegation against the petitioner as the Chairman of the NAC, as made to reveal from Annexure-1, is that the Ward Committees in the NAC have not been constituted in violation of Section 57-A of the Act; irregularities in sanitation work and excess payments made on the head of labour expenses; and construction of paver roads has been taken up without permission of the Water Resources Department, Government of Odisha without complying Rule 335 of the Odisha Municipal Rules, 1953. As against the above charges, an explanation was called for from the petitioner and it was furnished as per Annexure-2 but thereafter, it was followed by the impugned decision vide Annexure-6. It has been alleged that opposite party No.2 is incompetent to issue such notice, as it should have been by the Government. On perusal of Annexure-1, this Court finds that the notice is signed by opposite party No.2 and has been issued by the order of the Government. Though, such a plea is advanced with the submission of Mr. Samal, learned

counsel for the petitioner, the Court is not convinced, rather, is of the view that the notice has been issued by the Government on the orders of the Governor.

12. As regards the irregularities and other allegations revealed from Annexure-1, the contention of the petitioner is that they by themselves are not sufficient to direct removal under Section 53 of the Act. As per Mr. Samal, learned counsel, the petitioner may be said to have been negligent, but any such default cannot be a ground of removal, as Section 53 of the Act stipulates that a Chairperson or Vice-Chairperson of the Municipality, if found to have willfully refused or disobeyed to carry out the provisions of the Act, or any such lawful orders issued thereunder, upon an enquiry and being satisfied, he may be removed by the Government. The Court is of the view that negligence is generally not considered willful conduct, as it usually stems from carelessness or failure to exercise reasonable care, rather than intentional wrong doing, however, extreme forms of negligence or any such negligence, which is gross or willful or wanton negligence can blur this line by demonstrating a conscious reckless disregard for the consequences. An inadvertent mistake or oversight or failure to act as a reasonable person could amount to negligence. A gross negligence, according to the Court, is a severe or extreme lack of care that shows reckless disregard, while discharging a duty. A willful misconduct involves an intentional, conscious action where the party knows the consequences and acts haywire or acts

with reckless indifference often to cause harm or loss to others. While ordinary negligence is not intentional, gross-negligence is often treated as functionally equivalent to willful or reckless conduct. Essentially, negligence is a lack of foresight while willful conduct is an act with full knowledge of the potential harm and the consequences to follow. The expression, 'gross negligence' and 'willful misconduct' are used in statutes and contracts and yet, seldom defined. Gross negligence is generally understood as a higher degree of failure to adhere to a standard of care, which would be expected from a prudent person in similar circumstances and willful misconduct is generally understood as knowingly deviating from a code of conduct, which would be expected from a person under the circumstances or deviating from a specified code of conduct. The subtle distinction between negligence and willful misconduct has to be properly understood. Any such willful act at the instance of a Chairperson of an Urban Local Body, who has been proceeded with an action under Section 53 of the Act, shall have to be proved to the hilt since it invites a penal consequence. The negligence of a Chairman and failure to discharge his duties may be considered sufficient ground for removal under Section 53 of the Act provided it is proven that such failure was willful or involve disobedience of the provisions of the Act.

13. For better appreciation, the relevant provision of Section 53(1) of the Act is extracted herein below:

"53. Removal of Chairperson or Vice-Chairperson.

(1)If at any time during the term of office of the Chairperson or a Vice-Chairperson it comes to the notice of the State Government that such Chairperson or Vice-Chairperson wilfully omits or refuses to carry out, or disobeys the provisions of this Act or any Rules, bye-laws, Regulations or lawful orders issued thereunder, they may cause an enquiry to be made by Director or the District Magistrate or by an officer not below the rank of a Deputy Secretary of the State Government, as the Government may, by notification, direct."

On a reading of the above provision, it is made to understand that the State Government can initiate removal of a Chairperson or Vice-Chairperson on the grounds stated therein with a procedure prescribed as per Sub-Section (2) of Section 53 of the Act for an enquiry and explanation called upon from him through the Enquiring Officer.

14. On the allegations of the Councilors failing to constitute the Ward Committees, making excess payments to labourers and construction of paver roads taken up without the permission of the Govt. Department may constitute negligence or violation of official duties but to invite action under Section 53 of the Act, it has to be concluded that such negligence is willful or deliberate disobedience of the provisions of the Act. Such a satisfaction has to be arrived at by the Government while directing removal of a Chairperson or Vice-Chairperson of a Municipality or NAC.

15. Mr. Samal, learned counsel for the petitioner refers to the decision of the Apex Court in **Ravi Yashwant Bhoir** (supra), wherein, while dealing with a case of misconduct by an elected member of Maharashtra Municipal Council, it was held and concluded that a mere error of judgment resulting in the doing of a negligent act does not amount to any misconduct; failure on the part of the President of the Municipal Council to call general body meeting inadvertently, unintentionally and in ignorance of the statutory requirements without any corresponding loss to the Municipal Council would not amount to misconduct. It would be profitable to reflect upon the relevant observations made by the Apex Court therein, which are to the effect that there can be no quarrel with the settled legal proposition that removal of a duly elected Member on the basis of proved misconduct is a quasi-judicial proceeding in nature, a view which stands fortified by the Constitution Bench decisions in **Bachhittar Singh Vrs. State of Punjab and another AIR 1963 SC 395** and **Union of India Vrs. H.C. Goel AIR 1964 SC 364** and therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in absence of any provision in that regard. It is further observed therein that any elected official in local self-government has to be put on a higher pedestal as against a Government servant. If a temporary employee of the Government cannot be removed on the ground of misconduct without holding a full-fledged inquiry, it is difficult to imagine how an elected office bearer can be

removed without it. Lastly, it was concluded that in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law; and that the proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed. The final view expressed by the Apex Court in the above decision is that there has been a legal malice and therefore, the removal of duly elected Chairman of the Council in a casual and cavalier manner without strict adherence to the safeguards provided under the statute, which are to be scrupulously observed and decision in that regard, is liable to be quashed.

16. The Court is not inclined to burden the judgment with other case laws cited from the side of the petitioner except to refer to a decision of this Court in **Lingaraj Sahu** (supra), 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.

17. On a reading of Annexure-6, it is not revealed as to whether any such conclusion was reached at by opposite party No.1 directing removal of the petitioner from the post of Chairmanship of the NAC. It is reiterated that a satisfaction shall have to be reached at by the Government, while initiating action under Section 53 of the Act that the petitioner acted prejudicially to the interest of the NAC in not complying the provisions of the Act and that it was a willful or deliberate act of misconduct. By not constituting the Ward Committees as required under Section 57-A of the Act and any such negligence without trace of mischief cannot entitle the Government to direct removal of a Chairperson or Vice-Chairperson exercising the power conferred under Section 53 of the Act.

18. The contention of Mr. Sahoo, learned ASC for the State that even though the notification at Annexure-6 does not reveal the details of the findings, but it must have been concluded by the Government that the petitioner was negligent and a willful defaulter and hence, liable to be

removed from the office. When any such authority is exercised under Section 53 of the Act, reasons are to be assigned. As to what prevailed upon the Government to direct the removal of a Chairperson or Vice-Chairperson from the office must be explicitly evident from the record. The petitioner having been alleged of irregularities, unless it has been a willful gross negligence in complying with the provisions of the Act, any such decision by the Government towards his removal cannot be justified. Neither the notification at Annexure-6 disclosed the reason behind removal of the petitioner nor anything is on record to satisfy the Court that the Government was well within its powers to remove him exercising power under Section 53 of the Act. The allegation file opened against the petitioner has been produced by Mr. Sahoo, learned ASC, but the Court finds nothing adverse or incriminating therein to allege that he did any mischief within the meaning of Section 53 of the Act, which would invite his removal from the office.

19. As far as non-supply of enquiry report of opposite party No.3 is concerned, the Court considering the submissions of Mr. Sahoo, learned ASC for the State and Mr. Palit, learned Senior Advocate for the Intervener is of the humble view that a copy of the same should have been supplied to the petitioner even though the Act is silent. In respectful disagreement with the submission of Mr. Palit, learned Senior Advocate, the Court is of the view that when the petitioner demanded for a copy of the enquiry report clearly revealed from the record, it ought to have been supplied to

him during the proceeding under Section 53 of the Act. Under the general principles of administrative law and the requirements of natural justice, which govern proceedings under Section 53 of the Act, in the humble opinion of the Court, a copy of the enquiry report received under Sub-Section (2) thereof must be supplied to the Chairperson or Vice-Chairperson to allow him a reasonable opportunity to defend before the Government takes a final call. No doubt, the Act allows the Government to initiate an enquiry and upon receiving the enquiry report and explanation from the Chairperson or Vice-Chairperson to take a decision on his removal. But, according to the Court, while the statute mandates an enquiry, the principles of natural justice demands that no order detrimental to a person's position, such as, removal or suspension, can be passed without giving him a reasonable opportunity of being heard. Furthermore, to make the hearing meaningful, a copy of the enquiry report must be served on the Chairperson or Vice-Chairperson to let him know about the findings and evidence to receive a proper reply and response to the same. Similar, though not identical, procedures in disciplinary or administrative actions reinforce that a person has the right to be heard not only during the enquiry, but at the stage when findings are considered and according to the Court, it should not be any different in case of a proceeding under Section 53 of the Act and therefore, it is mandatory to provide a copy of the enquiry report to the Chairperson or Vice-Chairperson before the Government takes a final action,

which is based on the principles of natural justice interpreted in the context of the Act. When the Act prescribes an opportunity to submit explanation, the person accused of and facing the action must know the specific charges and also the evidence against him, which would obviously include the findings of the enquiry and therefore, failing to provide a copy of the same denies a reasonable opportunity to defend. The Court is of the view that for a meaningful enquiry, such an exercise has to be undertaken by the Government while dealing with the removal of an elected representative of the people. According to the Court, an enquiry report must be served to the affected party to enable him to make an effective representation before the final decision of the Government arrived at. So, the contention of Mr. Palit, learned Senior Advocate for the Intervener that the Act does not provide any such provision specifically dealing with supply of copy of the enquiry report and only allows one to submit an explanation through the Enquiring Officer and therefore, there is no illegality, is liable to be rejected. Rather, the Government shall have to be extremely vigilant while considering removal of an office bearer of the Municipality or NAC since it is dealing with an elected representative. The local bodies are institutions of self-governance specially created in accordance with the Constitutional mandate and therefore, any such exercise under Section 53 of the Act needs strict compliance of the provisions thereof and adherence to the principles of audi alteram partem.

20. When the Court finds that there has been irregularities alleged against the petitioner in absence of anything on record even remotely suggesting that it was a willful default or deliberate intent on the part of the petitioner in not complying with the provisions of the Act and absence of findings in that regard not revealed from Annexure-6 or any such material brought to the notice of the Court justifying the action of removal in terms of Section 53 of the Act and all the more when the enquiry report was not supplied to him during and in course of the proceeding, the irresistible conclusion of the Court is that the impugned decision cannot be sustained. It is concluded that mere negligence or irregularities at the instance of the petitioner, which is prima facie revealed from the record, cannot be a ground enough for his removal under Section 53 of the Act, which has to be substantiated with the definite finding that it was a willful or deliberate act of misconduct in not complying with the provisions of the Act. So, the final conclusion is the impugned decision towards removal of the petitioner as the Chairman of Bhuban NAC suffers from legal infirmity.

21. Accordingly, it is ordered.

22. In the result, the writ petition stands allowed. As a necessary corollary, the impugned notice as per Annexure-1 and notification under Annexure-6 are hereby quashed.

(R.K. Pattanaik)
Judge

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