

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12-8-2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.11905 of 2015

R.Selvi Radhakrishnan,  
W/o.Radhakrishnan,  
Varakur Village Panchayat,  
Thimiri Panchayat Union,  
Arcot Taluk,  
Vellore District. .... Petitioner

Vs.

- 1.The District Collector-cum-Inspector of Panchayats  
Vellore District,  
Vellore.
  - 2.The Block Development Officer (Village Panchayat)  
Vellore District,  
Vellore.
  - 3.Mr.P.Rajendran
  - 4.Mr.S.Thangam
  - 5.Mrs.S.Vasantha
  - 6.Mr.P.Boopalan
  - 7.Mrs.A.Sudha ... Respondents
- R3 to R7 are impleaded as per order  
dated 12.08.2015 by N.K.K.J  
in MP.3/2015 in WP.11905/2015

Prayer: Petition filed under Article 226 of the Constitution of India  
praying for the issuance of a Writ of Certiorari to call for the  
records pertaining to the order bearing Na.Ka.A3/1663/2014 dated  
02.09.2014 issued by the first respondent and quash the same.

For Petitioner

:Mr.V.Suthakar

For Respondents

:Mr.V.Jayaprakashnarayanan

Spl.Govt.Pleader for R1

Mr.R.Rajendra Narasimhan for R2

Mr.B.Gopalakrishnan for RR 3 to 7

ORDER

The petitioner was elected as President of Varakur Village  
Panchayat, Thimiri Panchayat Union, Vellore District. While she was  
functioning as President, it was alleged that she indulged the

misappropriation in handling the public money and therefore, the first respondent issued a show cause notice on 20.7.2012, for which a reply was given on 16.8.2012. As a result, an enquiry was conducted on 7.3.2013 and a show cause notice was issued to the petitioner on 22.6.2013 basing on the remarks made by the Ward members, during the enquiry conducted by the Tahsildar.

2. On 2.7.2013 the petitioner gave a representation, contending that since she did not know about the procedure in dealing with the public money, the said violation had taken place and pleaded for admonition. Taking note of that, by virtue of order dated 14.2.2014, the earlier proceedings to remove the petitioner as President, initiated under Section 205 of the Tamil Nadu Panchayat Union Act, were dropped.

3. Thereafter, again on 4.8.2014, yet another show cause notice was issued making allegations against the petitioner under Section 203 of the Tamil Nadu Panchayat Act for misappropriation of fund to the tune of Rs.4,64,564/- for the period from March 2014 to June 2014 in respect of inspection made on 22 items. The petitioner gave further representation on 18.8.2014. After considering the said explanation, the impugned order dated 2.9.2014 has been passed by the Collector, taking away, the cheque signing power from the petitioner in respect of the Account of the Varakur Village Panchayat. Further the second respondent has been directed to operate the said account. The said order is being challenged before this court.

4. Mr.V.Suthakar, learned counsel appearing for the petitioner would submit that due to political vendetta, the petitioner is being harassed. He would further submit that having absolved the petitioner from the earlier proceedings, there is no occasion for the first respondent to proceed again the petitioner under Section 203 of the Tamil Nadu Panchayat Act, which is only an emergency power conferred under the Act and the explanation submitted by the petitioner was not discussed. No finding for exercising emergency power, has been given by the Collector, while passing the impugned.

5. On the other hand, Mr.V.Jayaprakashnarayanan, learned Special Government Pleader would submit that after dropping the proceedings initiated under Section 205 of the Tamil Nadu Panchayat Act, within three weeks again the petitioner indulged in misappropriation of funds of the Varakur Panchyat to the tune of Rs.2,00,000/-. Therefore, the Collector rightly took away the cheque signing power from the petitioner.

6. Since based on the impleading petitioners' complaint only, the impugned order has been passed, the impleading petitioners are necessary parties and they are brought on record. Heard Mr.B.Gopalakrishnan as counsel for newly impleaded respondents 3 to 7.

7. A perusal of the record would show that the petitioner was earlier proceeded with under Section 205 Tamil Nadu Panchayat Act and after enquiry, the petitioner submitted for admonition, since she did not know the procedure in handling money to the Varakur Panchayat. On 14.2.2014, the first respondent taking a lenient view, dropped the proceedings initiated against the petitioner. Challenging the said order the impleading petitioners already filed a revision petition and is stated to be pending in CRP.No.74 of 2014.

8. When that is the position, the petitioner herself should have acted very diligently in handling the funds of the Varakur Panchayat and should not have acted in the manner, which compelled the first respondent to take action against her for the similar irregularities within three months. That too the misappropriation of funds of the Varakur Panchayat to the tune of Rs.4,64,564/- cannot be viewed very lightly. Even on the earlier occasion, since the petitioner admitted guilty, imposing punishment to remove her from the post of President, was dropped.

9. The contentions that no factual finding has been given and the impugned order has been issued based on the explanation given by the petitioner are not sustainable. A scrutiny of the impugned order would show that the Collector applied his mind and after adopting the proper procedure, issuing show cause notice and also calling explanation, only came to the factual conclusion against the petitioner that she has not properly handed the funds of Varakur Village Panchayat.

10. Under Emergency power, the cheque signing power has been taken away from the petitioner which cannot be stated that violation has been committed by the Collector. If the petitioner continues to handle the funds of the Varakur Panchayat, definitely there is a chance of committing misappropriation of funds of the Varakur Panchayat by manipulation of accounts. Only because of the past antecedent of the petitioner, the action stand has been taken and it has been rightly stated in the impugned order.

11. Though the learned counsel appearing for the petitioner relied upon the judgement of this Court in W.P.(MD)No.139 of 2013 dated 04.04.2013 and stated that the District Collector has no power under the Tamil Nadu Panchayat Union Act, a clear reading of Section 203 of the Act would reveal that the Collector has got emergency power to do immediate execution. When the appropriate person was unable to exercise her power, it constitutes emergency situation enabling the collector to invoke emergency power. When an authority is there and the said authority, namely, the President of the Varakur Panchayat is found to be ineligible, definitely, the power is vested with the Collector to execute the emergent work. Therefore, the emergency situation arises, when the petitioner cannot be entrusted with the privilege of cheque signing power, which will lead the undesirable situation in handling the fund of Panchyat.

12. Therefore, it cannot be said that Section 203 of the Tamil Nadu Panchayat Union Act would not enable the District Collector to take away the cheque signing power. Even, the it is not stated explicitly in the Act, that Section 203 of the Tamil Nadu Panchayat Union Act gives incidental and ancillary power to the Collector-cum-Inspector of Panchayat to execute or do the immediate and urgent works.

13. Therefore, there is no occasion for this Court to re-appreciate the evidence and substitute its own view with that of the Collector. Once factual finding has been reached by the appropriate authority, this court cannot sit on appeal over the said finding under Article 226 of the Constitution of India and therefore, the writ petition fails and the same is dismissed. No costs. Consequently the connected M.P.Nos.1 and 2 of 2015 are also dismissed.

14. If the petitioner intends to give any representation to review the order made by the first respondent, it is always open to the petitioner to give such representation and if any such representation is being submitted, it is open for the authority to consider and pass order on the said representation as per law.

Sd/-

Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To:

1.The District Collector-cum-Inspector of Panchayats  
Vellore District,  
Vellore.

2.The Block Development Officer (Village Panchayat)  
Vellore District,  
Vellore.

+1cc to M/S.v.sUTHAKAR, Advocate SR.42610

+1cc to M/s.B.Gopalakrishnan, Advocate SR.42407

+1cc to Government Pleader SR.42410

W.P.No.11905 of 2015

rsk[co]  
srg 29.09.2015