

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.2450 and 2451 of 2015
and
M.P.Nos.1 and 1 of 20015

V.Kasthuri
B.Shathivel

... Petitioner in W.P.No.2450/2015
... Petitioner in W.P.No.2451/2015

Versus

1. The District Collector/Inspector of Panchayats
Villupuram.
2. The Block Development Officer,
Vanur Panchayat union,
Villupuram District.
3. The Tasildar,
Vanur Taluk,
Villjupuram,
Villupuram District. ... Respondents in both W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari and call for the records of the proceedings passed by the first respondent made in R.C.No.AA2/2677/2012 dated 09.01.2015 and to quash the same.

For Petitioners : Mr.M.C.Swamy

For Respondents : Mr.S.Gunasekaran
Government Advocate

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COMMON ORDER

In these Writ Petitions, the petitioners are President and Vice President of the Nallavur Village Panchayat, Vanur Panchayat Union, Villupuram District. The challenge in these writ petitions is to the orders passed by the 1st respondent removing the petitioners from the post of President and Vice President of the village Panchayat.

2. Heard Mr.M.C.Swamy, learned counsel appearing for the petitioners and Mr.S.Gunasekaran, learned Government Advocate appearing for the respondents and perused the entire materials placed on record as well as the original files produced for the perusal of this court.

3. The facts are not in dispute. The facts relating to the election of the petitioners initially as ward members of the Panchayat and subsequently elected as President and Vice President of the Panchayat are not in dispute. Therefore, those issues are not gone into and therefore, this Court would straightaway proceed to the controversy, which is subject matter of these writ petitions.

4. Initially the cheque signing power of the petitioners was withdrawn pursuant to an order dated 07.09.2012, which was challenged by filing writ petitions and it is stated that the writ petitions were allowed and the cheque signing power was subsequently restored. However, by virtue of the impugned orders in these writ petitions, the petitioners having been removed from the elected office are no longer the President and the Vice President. The 1st respondent issued a show cause notice on 07.09.2012 under Section 205(1) of the Tamil Nadu Panchayats Act 1994 [hereinafter referred to as "the Act"]. In the said show cause notice, there were 9 charges framed. It is to be pointed out that though 9 charges have been framed, those do not allege that the petitioners had misappropriated the funds of the Panchayat. The charge largely proceeds on the basis that, the petitioners being the President and Vice President, did not exercise proper control over the affairs of the Panchayat and did not enforce rules and regulations, thereby resulting in financial loss to the Panchayat. On receipt of the show cause notice, the petitioners had submitted their reply, denying and disputing the allegations made therein, apart from stating that 3 persons are responsible for the misdemeanors which were caused in the Panchayat funds, viz., the Panchayat clerks Elumalai and Mohandoss and Block Development Officer/Venkatesan. As against the Block Development Officer and the other 2 persons, criminal complaints have been given by the petitioners and case has been registered in Crime No.21/12 and Crime

No.9/13 on the file of the District Crime Branch, Villupuram. The first respondent has admitted that as against Venkatesan, the Block Development Officer, charge memo has been issued under Rule 17(B) and the matter is in progress. The respondent would state that these 3 persons have taken advantage of the fact that they were not given proper training after being elected to the office and misused their position and misappropriated huge amount of funds and ultimately, the petitioners have been penalised.

5. Apart from raising such contention in the reply, the petitioners also stated other factors to establish that fraud and forgery has been committed by forging their signatures in the cheques, which were retained by the Panchayat Assistant. There is one more submission made by the petitioners by stating that the wife of the Panchayat Assistant stood in the election for the post of President and miserably lost and that was one more reason for him to create problems in the functioning of the Panchayat, which has now ultimately resulted in the impugned orders. It is further submitted that repeated requests were made to the Block Development Officer to transfer the Panchayat Assistant, yet the Panchayat Assistant was not transferred. It was therefore submitted that these are all factors which should be taken into consideration and appropriate legal action has to be taken against the Panchayat Assistant and the Block Development Officer and the petitioners should be exonerated. In terms of the procedure contemplated under Section 205 of the Act, the District Collector and the Inspector of Panchayat has to consider the explanation and take a decision as to whether the explanation is acceptable and if not, whether the matter requires exercise of power under Section 205 of the Act. After recording reasons in writing and communicating the same to be aggrieved persons, the petitioners herein, the Collector has to direct the Tahsildar to convene a meeting of the Panchayat. The District Collector vide proceedings, dated 26.03.2013, after considering the petitioners' explanation thought fit to initiate action to remove the petitioners from the elected office. It is seen that the said communication has been received by the President of Panchayat and copy of acknowledgment has been produced before this Court. In the said proceedings, dated 26.03.2013, the District Collector has authorized the Tahsildar to convene the meeting. The procedure to be followed by the Tahsildar while convening the meeting is in terms of Sec.205(8) of the Act. In terms of the said provision, the Tahsildar has to comply with 3 requirements, viz.,

- (i) Read to the Village Panchayat, notice of the Inspector;
- (ii) The explanation submitted by the President; and
- (iii) The proposal for the removal with the president.

6. On a perusal of the notice issued by the Tahsildar, dated 12.04.2013, it is evident that these requirements have not been fulfilled. The notice does not specifically state that it is a notice where the proposal to remove the President and Vice President will be discussed. The notice simply states that meeting is convened on 18.04.2013, to discuss about the irregularities committed in the expenditures incurred by the Panchayat. The notice refers to the proceedings of the District Collector, dated 26.03.2013. This proceedings is the proposal made by the District Collector to remove the President. Though notice has referred to the proceedings dated 12.04.2013, in the body of the proceedings, there is no indication that the Tahsildar is convening the meeting on 18.04.2013 to consider the subject, as to whether the President of the Panchayat has to be removed from the Office. This inherent defect cannot be rectified subsequently.

7. The minutes of the meeting held by the Tahsildar has been placed before this Court, from which it is seen that the Tahsildar has not read the proposal of the District Collector to remove the President from the post. The minutes recorded by the Tahsildar states that the charges against the persons and their explanation alone were read. Therefore, this is one more ground to show that Section 205(8) of the Act has been violated.

8. Surprisingly, in the said meeting, all the ward members have consistently supported the President and Vice President and all of them have uniformly blamed the Office Assistant, the Panchayat Assistant and the Block Development Officer. After the report of the meeting was submitted by the Tahsildar on 18.04.2013, the District Collector has issued a show cause notice on 28.05.2013, calling upon the petitioners to submit their explanation. The petitioners has submitted their explanation on 26.06.2013. Thereafter, for nearly 1-1/2 year, no action was taken and ultimately by the impugned orders dated 02.01.2015, they have been removed from the post of President and Vice President, which is questioned in these writ petitions.

9. From the above mentioned facts it is evidently clear, that there are two inherent defects committed by the Tahsildar while convening the meeting and while proceeding under Section 205(8) of the Act. Admittedly, there is nothing to show that the proposal of the District Collector to remove the petitioners from their elected office was read out in the meeting convened by the Tahsildar. This being a mandatory requirement under Section 205(8) of the Act, would vitiate the entire proceedings.

10. The second aspect of the matter would be that the notice convening the meeting issued by the Tahsildar did not disclose, that the meeting is convened for the purpose of discussing as to whether the President or the Vice President has to be removed from the office. Therefore, the members who attended the meeting were not aware at the time when they received notice, that in the meeting, there will be a discussion for removal of the President and Vice President. This inherent defect also cannot be ignored.

11. Coming to the facts of the case, it is seen that the first respondent does not state that the petitioners have misappropriated the funds, rather the allegation against them is they have not exercised proper care and caution; they have pleaded ignorance of the laws of the Panchayat, thereby, abdicated their duty. The contention of the petitioners is that they require training and they have clearly stated that the Panchayat Assistant in collusion with the Block Development Officer, has misappropriated the funds and criminal case also has been registered.

12. In such circumstances, it has to be seen whether the power under Section 205 of the Tamil Nadu Panchayat Act could be exercised. In terms of Section 205(1) of the Act, the District Collector has to be satisfied that the President wilfully omitted or refused to carry out or disobeyed any provisions of the Act or any Rule or By-law, Regulation or lawful order made or issued under the Act or abused any power vested in him. Then, the Inspector is entitled to invoke Section 205(1) of the Act by issuing a notice in writing to the President directing him to offer explanation with respect to his acts of omissions or commissions. Admittedly, in the instant case there is no allegation that there is a wilful omission or wilful refusal to carryout or disobedience of any provisions of the Act. It may be true that it is a case of lack of supervision or lack of control over the subordinate staff. Therefore, the question would be whether such conduct of the petitioners can be termed as wilful. This Court in the case of Ramasamy vs. State of Tamil Nadu reported in 2010(2) CWC 647, while considering the correctness of somewhat an identical impugned order, examined the aspect as to what would be wilful act and after referring to the decision of the Hon'ble Supreme Court that it implies a wilful abuse or an intentional wrong. In the case on hand also, there is no such allegation that the petitioners wilfully omitted or committed certain act or wilfully abused the law. In the absence of such an allegation, the very invocation of the power under Section 205 of the Act itself is not warranted.

13. The complaint made against the Block Development Officer has a definite bearing on the issue, since he is a Government

Official and the petitioner as President of the Panchayat, was unable to transfer a Panchayat Assistant and she sought the assistance of the Block Development Officer, who appears to have connived with the Panchayat Assistant and he was being retained in the same Panchayat. Thus the Government Official who is supposed to supervise the affairs of the Panchayat and guide the Panchayat President if there is any difficulty, has not taken any action on the petitioners' complaint for transferring him.

14. The learned Government Advocate submitted that it was well open to the petitioners to transfer the Panchayat Assistant. The facts in the present case appears to be slightly complicated, since the Panchayat Assistant's wife was one of the unreturned candidates for the post of President and it appears that he wielded much influence in the area and the Block Development Officer was also supporting him. Thus it could be very well seen that the petitioners cannot be stated to have wilfully failed to discharge their duties or ignored the directions issued.

15. That apart, the views of the Panchayat are recorded by the Tahsildar so as to ascertain as to what the other elected members have to say against the elected President and Vice President. In the instant case, all the ward members have uniformly supported the stand taken by the President and Vice President and there is no dissent to that. Therefore, this is also one more factor the District Collector ought to have taken note of. In any event, the procedural irregularity which has been pointed above, goes to the root of the matter.

16. At this stage, it will be useful to refer to the decision of this Court in *D.Bagyalakshmi vs. The Secretary to Government*, reported in 2011(5) CTC 496, wherein, this Court emphasised the need for reading the proposal for removal of the President at the village Panchayat meeting, as it was mandatory in terms of Section 205(8) of the Act and if the same has not been read, the order removing the President is ultra vires. While rendering such finding, this Court referred to the decision of the Hon'ble Division Bench in the case of *K.Ramalingam vs. Secretary to Government* reported in 2011(2) CTC 134 (DB). Thus taking into consideration all the above factors and a cumulative reading of the allegations made against the petitioners, it is evidently clear that the allegation is only lack of supervision and lack of proper control, which the petitioners have explained on account of hostile atmosphere in the Panchayat created by the Panchayat Assistant, with the connivance of the Block Development Officer. Further more, the criminal case filed by the petitioners as against the Block Development Officer and the Panchayat Assistant is

pending and the District Collector has initiated disciplinary action against the Block Development Officer and the charge memo has been issued under Rule 17-B.

In the light of the above, this Court is of the view that the impugned orders are bad in law and calls for interference. Accordingly, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms/mrp

To

1. The District Collector/Inspector of Panchayats
Vilupuram.
2. The Block Development Officer,
Vanur Panchayat union,
Villupuram District.
3. The Tasildar,
Vanur Taluk,
Villjupuram,
Villupuram District.

+2cc's to M/s.Senthil Swamy Associates, Advocate, S.R.No.17267 & 17268
+1cc to the Government Pleader, S.R.No.17347

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and

M.P.Nos.1 & 1 of 2015

TM(CO)
CA(10/04/2015)

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