IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 25014 of 2013

R. Dhanalakshmi ..Petitioner

Vs.

1. The Inspector of Panchayats-cum-District Collector,
   Cuddalore District,
   Cuddalore - 607 001.

2. The Assistant Director (Panchayats),
   Cuddalore.

3. The Tahsildar,
   Kattumannarkoil,
   Cuddalore District. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the impugned order of the 1st respondent in his Na.Ka. No. A8/4181/2012 dated 17.08.2013 and Tamil Nadu Gazette Notification Extraordinary issue Part VI-Section 2 dated 19.08.2013 and quash the same.

For Petitioner :: Mr.A.R. Nixon

For Respondents:: Mr.RM. Muthukumar, Govt. Advocate

O R D E R

This writ petition is filed challenging the order issued by the 1st respondent in Na.Ka. No. A8/4181/2012 dated 17.08.2013 and Tamil Nadu Gazette Notification Extraordinary issue Part VI-Section 2 dated 19.08.2013 .

2. The facts of the case are:

The petitioner is the President of Kavalakudi Village Panchayat of Keerapalayam Panchayat Union having been elected in October, 2011 and according to her, she has been discharging her duties as the President of the said Panchayat to the satisfaction of the villagers. While so, the 2nd respondent, Assistant Director (Village Panchayats), Cuddalore, on inspection, found serious lapses and procedural irregularities and observed that Panchayat Funds have been misused and misappropriated in the name of carrying out repairs to roads, repairs to 5 pumpsets, 27 handpumps, bulbs, repairs to pipelines, repairs to culverts, maintenance of handpumps, paving cement platforms, cleaning drainage, clearing vegetation in tanks, clearing bushes, jungle clearance, spares for OHT motor and engaging NMR for cleaning tanks, etc. during the period from March, 2012 to July, to the tune of Rs.8,81,741/-. The 2nd respondent further observed that the expenses incurred by the petitioner were not in consonance with the orders and the executive instructions of the Government and that she had incurred expenditure without absolute necessity by using illegal methods exceeding monetary limit allowed by the Government in the financial year. Further, the 2nd respondent found that for all the expenditures incurred, neither approval of tenders nor quotation from the competent authorities was obtained and that the expenditures were not supported by proper vouchers. Based on the 2nd respondent's report, the 1st respondent issued a show cause notice to the petitioner on 05.10.2012. The petitioner submitted her reply on 02.11.2012. Not satisfied with the reply, the 1st respondent directed the Tahsildar to convene a meeting for getting the views of the members of the Village Panchayat on the explanation of the petitioner and accordingly, a meeting was convened on 01.02.2013 by the 3rd respondent. On that day, all the members, who were present, expressed their view to accept the explanation of the petitioner and the same was conveyed to the 1st respondent by the 3rd respondent. However, the views of the village members were not acceptable to the 1st respondent and therefore, he issued a second show cause notice on 15.02.2013. That was challenged before this Court in W.P. No. 6584 of 2013. The said writ petition was dismissed by this Court by order dated 20.03.2013 granting two weeks' time to the petitioner to give explanation to the show cause notice issued by the 1st respondent dated 15.02.2013 and further d the 1st respondent to consider the petitioner's objections and thereafter, pass final orders. Pursuant to the order passed by this Court, the 1st respondent conducted an enquiry and the petitioner also submitted her explanation on 01.04.2013. Personal hearing was fixed on 29.04.2013 and further explanation was also obtained from the petitioner. However, not being satisfied with the explanation, the 1st respondent proposed to remove the petitioner as the President of Kavalakudi Village Panchayat and conveyed the decision to the Tahsildar, who was asked to convene a meeting to ascertain the views of the Village Panchayat. On 11.05.2013, a meeting was convened and all the six members, who were present in the meeting, expressed their support for the petitioner. Even thereafter, the 1st respondent, who was not satisfied with the views of the Panchayat Board members, issued the final show cause notice on 22.05.2013 for which the petitioner submitted her explanation on 18.06.2013. Giving reasons, the petitioner's explanation was rejected and the impugned order was passed on 17.08.2013 and gazette notification was also made in extraordinary issue No.234 Part VI Section 2 dated 19.08.2013, removing the petitioner as the President of the Village Panchayat in question. The said order is under challenge in this writ petition.

3. Mr.A.R.Nixon, learned counsel for the petitioner would submit that it is not a question of misappropriation, but, only a question of incurring expenditure beyond the permissible limit. According to the learned counsel, the necessity to incur expenditure urgently arose due to the attack of "Thane" storm during 2012 and the respondents cannot expect any formal procedures to be followed during such emergent situation. The Panchayat Funds have been rightly spent based on the needs of the people and therefore, it cannot be found fault with. He would further submit that the views of the members of the Village Panchayat were obtained twice and on both occasions, they were in favour of the petitioner. In support of his contentions, the learned counsel relied upon the judgment of the Full Bench of this Court rendered in The District Collector and Inspector of District Panchayat, Villupuram and another V. Devi Parasuraman reported in 2009 (4) CTC 609; the judgment of a Division Bench of this Court rendered in K. Ramalingam V. The Secretary to Government, Department of Local Administration reported in 2011 (2) CTC 134 and the judgment rendered in D. Bagyalakshmi V. The Secretary to Government, Department of Rural Development and Panchayat Raj, Chennai reported in 2011 (5) CTC 496.

4. On the other hand, Mr.RM. Muthukumar, learned Government Advocate would submit that the petitioner had incurred expenditure without any vouchers and she was not able produce any proof as to the necessity to incur expenditure beyond the limit fixed by the Government before the respondents, especially, when the 2nd respondent conducted inspection. Since the expenditure has been made exceeding the ceiling limit fixed by the Government and without following the procedure, the 1st respondent had rightly passed the impugned order removing the petitioner from the post of President of the Village Panchayat in question.

5. Heard the parties and perused the records.

6. There is no dispute with regard to the onslaught of "Thane" storm in Cuddalore District during 2012, which caused devastating damage to the entire area in 2012. When such emergent situation had arisen, it is the responsibility of the local body, not only to cater to the needs of the people, but also to rectify the damages caused by the storm. In such a contingency, the respondents cannot expect the petitioner to

follow each and every procedure contemplated and await grant of permission. In normal circumstances, there is no quarrel with regard to the aspect that procedures contemplated under the relevant Act have to be complied with. However, the same would not apply when the situation demands immediate and emergent measures, in the interest of the village and the village people. Therefore, when the petitioner had rightly acted in the interest of the people, it cannot be found fault with. That apart, the allegation against the petitioner is that she had spent more than what was permitted by the Government. As already observed, when there was an extraordinary situation, the petitioner cannot be expected either to get permission or adhere to the ceiling fixed by the Government. What is paramount, at that time, is only the interest and welfare of the village people. Therefore, based on certain alleged violations, an elected representative cannot be removed, especially, when the elected members of the Panchayat had supported the petitioner twice and the judgments relied on by the learned counsel for the petitioner would support the case of the petitioner.

7. That apart, as rightly pointed out by the learned counsel for the petitioner, even if any amount had been spent, in excess, by the petitioner, there is an elaborate procedure provided under the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, which provides for appointment of an Auditor, in case of excess expenditure incurred, who will verify the accounts and if any wrong has been committed, then surcharge proceedings will be initiated against the violators. When such a course is available, ignoring the same, the 1st respondent cannot resort to proceedings under Section 205 of the Tamil Nadu Panchayats Act, 1994, removing the petitioner from the post of President of the Village Panchayat concerned. As already observed, the petitioner had incurred expenses over and above the permissible limit, only during time of crisis, in the interest and welfare of the village people.

8. For all the reasons stated above, the impugned order is set aside and the writ petition is allowed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

nv

To
1. The Inspector of Panchayats-cum-
   District Collector,
   Cuddalore District,
   Cuddalore - 607 001.

2. The Assistant Director (Panchayats),
   Cuddalore.

3. The Tahsildar,
   Kattumannarkoil,
   Cuddalore District.

+2 ccs Mr.A.R.Nixon, Advocate, sr.53733

W.P. No. 25014 of 2013

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