

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-08-2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

WRIT PETITION Nos.17794 and 25682 of 2013

And

M.P.Nos.1, 2 and 1 of 2013

Shanthi

...Petitioner in both WPs

Vs.

1. The Government of Tamil Nadu,
Represented by Secretary to Government,
Department of Rural and Panchayat Raj Development,
Fort St. George,
Chennai-9.
2. The Inspector of Panchayat
Cum District Collector,
Cuddalore District.
3. The Tahsildar,
Chidambaram Taluk,
Cuddalore District.
4. The Commissioner,
Keerappalayam Panchayat Union,
Cuddalore District.

...Respondents in both WPs

WP No.17794 of 2013 is filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records from the file of the first respondent passed in G.O.(P) No.265 dated 12.6.2013 and quash the same and consequently forbearing the third respondent to convene meeting on 3.7.2013 or on any subsequent date under Section 205(2) of the Tamil Nadu Panchayat Act, 1994.

WP No.25682 of 2013 is filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the file relating to removal proceedings published in Tamil Nadu Government Gazette No.234 Part VI, Section (2) No.VI (2) 155(b-1)/2013 dated 19.8.2013 from the file of the first respondent and quash the same and direction for reinstatement of the petitioner as President of Veyyalur Panchayat Board,

Keerappalayam Panchayat Union, Cuddalore District.

For Petitioner in both WPs : Mr.R.Margabandhu

For Respondents-1 to 3 in
both WPs : Mr.V.Jayaprakash Narayanan,
Special Government Pleader.

For Respondent-4 in both
WPs : Mr.S.V.Durai Solaimalai

COMMON ORDER

The petitioner was elected as a President in Veyyalur Panchayat in the Panchayat Board Elections. While functioning as the President, the second respondent made certain allegations of not properly spending money as per procedure. A show cause notice was sent under Section 205(1) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the 'Act') on 19.5.2012. An explanation was given on 5.6.2012 by the petitioner. Not satisfied with that the second respondent-Inspector of Panchayat-cum-District Collector sent notice for removal under Section 205(3) of the Act.

2. The Tahsildar was directed to convene a meeting of the Panchayat Board Members to ascertain their view regarding the removal of the petitioner as President. After ascertainment, additional explanation was sought for on 16.8.2012 and for which the petitioner sent an explanation on the very same day i.e., on 16.8.2012. After that, the second respondent passed an order under Section 205 of the Act for removal of the petitioner as President on 11.2.2013.

3. The first respondent notified the removal by virtue of G.O.(P) No.265, Rural Development and Panchayatraj (Para-4) Department dated 12.6.2013. Against the order of removal dated 11.2.2013, the petitioner preferred revision before the first respondent stating that all the required documents were not given to the members of the Panchayat Board and they were not explained the details of allegations and on other grounds.

4. The first respondent accepting the petitioner's contention that the procedure as per Section 205 (3) of the Panchayat Act that the Tahsildar had not read out the notice, explanation given by the petitioner and proposal for removal of President and non service of proceedings of the Tahsildar on the petitioner, the first respondent held that statutory requirements as laid down as per the Full Bench judgment of this Court in The District Collector and Inspector of District Panchayat vs. Devi Parasuraman and Another {2009 (4) CTC 609 (FB)} were not followed and therefore, the matter was remanded to the second respondent. Challenging the said remand order, W.P.No.17794 of 2013 has been filed by the petitioner.

5. After remand, again the second respondent directed the Tahsildar to convene the Panchayat Board Members Meeting and ascertain the views of the Panchayat Board Members regarding the removal of the petitioner. A notice of convening the meeting was given on 21.6.2013 and the views of the members were ascertained and thereafter a report was sent to the second respondent.

6. The second respondent again sent a notice to the petitioner, calling upon her explanation. Based on the report sent by the Tahsildar, an order of removal as President was passed on 17.8.2013 and the same was gazetted by the first respondent on 19.8.2013. The said orders are challenged in W.P.No.25682 of 2013.

7. Both the matters are taken up together for disposal.

8. Mr.R.Margabandhu, learned counsel appearing for the petitioner would submit that the procedure contemplated under the Tamil Nadu Panchayats Act, 1994 have not been followed by the second respondent throughout the proceedings and he made the following contentions:-

(i) The report dated 7.5.2012 sent by the Assistant Director of Panchayat, Cuddalore to the second respondent was not given to the petitioner along with the show cause notice dated 19.5.2012 issued under Section 205(1) of the Tamil Nadu Panchayats Act, 1994;

(ii) Along with the notice of convening of the meeting, all the materials were not given;

(iii) All the members of the Panchayat Board were not given the notice, explanation and further orders to the members of the Board and they were not explained to the members as well as to the petitioner before convening of the meeting;

(iv) Once the first respondent came to the conclusion that the procedures which are to be followed as per Section 205 (3) of the Act, were found to be not complied with by the District Collector, the order of remand should not have been made and the entire proceedings should have been quashed;

(v) When the meeting of the Panchayat Board Members were convened for the first time, there was an unanimous Resolution by the Panchayat Board imposing faith on the petitioner and therefore as per the judgment of this Court in K.Ramalingam vs. The Secretary to Government, Department of Local Administration, Secretariat, Fort St. George, Chennai-9 and Another {2011 (2) CTC 134}, the entire proceedings should have been discontinued;

(vi) Even after remand, all the materials/documents like the notice, reply notice, explanations and the statements were not appended to the notice dated 21.6.2013 of convening the Panchayat Board meeting were given by the Tahsildar and therefore, there is violation of Section 205(3) of the Act;

(vii) After ascertaining the views of the Panchayat Board, the second respondent-Collector did not issue any final notice calling for explanation from the petitioner as per the judgment of this Court in V.Kanagavalli Viswanathan vs. The Chief Secretary to Government, Rural Development and Panchayatraj (Para-4) Department, Secretariat, Chennai and 5 others in W.P.No.10676 of 2010 dated 20.7.2010 and therefore he seeks to quash both the proceedings;

(viii) As per Section 205(4), 7 days advance notice was not given for convening the Panchayat Board meeting and therefore, the meeting itself has not been convened as per law and hence the entire proceedings are vitiated.

9. On the other hand, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader would make the following submissions:-

(i) All the procedures as contemplated under the Tamil Nadu Panchayats Act, 1994 have been followed; when it was found to be not complied with as per Section 205 (3), the first respondent rightly remanded the matter for fresh disposal and therefore all the statutory requirements have been complied with;

(ii) The issue regarding non-furnishing of the report dated 7.5.2012 given by the Assistant Director of Panchyat along with the notice dated 19.5.2012 under Section 205(1) of the Panchayats Act by the second respondent is raised for the first time and that itself would go to show that no prejudice is caused to the petitioner by non-supply of the said document;

(iii) The issue itself has been set in motion by virtue of the orders passed by this Court in W.P.No.9538 of 2012 by one Palanivel Rajan and the respondents acted as per the orders of this Court only;

(iv) As per Section 205(8), as soon as the meeting is convened by the Tahisldar, the Tahsildar has to read over the notice of the Inspector of Panchayat and explanation, if any, to the Village Panchayat for consideration of the subject which has to be complied and that has been complied with and therefore, the petitioner cannot have any grievance in this regard;

(v) Since after the remand, the majority decisions of the Panchayat Board was that the petitioner had to be removed as President and therefore, there is no difference in the view taken by the second respondent-Collector and the Panchayat Board. Hence, no necessity arose to give further notice to the second respondent-Collector to the petitioner as per the Full Bench judgment (cited supra) and he seeks to dismiss both the writ petitions.

10. Heard Mr.R.Margabandhu, learned counsel appearing for the petitioner in both the writ petitions, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader for respondents 1 to 3 and Mr.S.V.Durai Solaimalai, learned counsel appearing for the fourth respondent in both the writ petitions and perused the available records.

11. It is admitted fact that the petitioner was elected as the President of the Veyyalur Panchayat Board by the public. The allegation against the petitioner is that the petitioner spent money without getting approvals which is in violation of Government Orders and the Rules. The explanation of the petitioner is that because of the devastation caused by the cyclone "Thane", the basic amenities, restoration of public roads, drinking water and electricity facilities etc., have to be restored. Hence, with the approval of the Panchayat Board works were carried out emergently only in the interest of the public. It is not the case of the respondents that the petitioner misappropriated the money and she only spent the money without approval.

12. Even as per the counter-affidavit filed by the second respondent, in paragraph-8, that the petitioner had committed willful commission and disobeyed the Tamil Nadu Panchayats Act, 1994, the existing Orders, Rules and Regulations and the procedures and incurred expenditure from the Village Panchayat Funds. She incurred expenditure exceeding the monetary limit allowed by the Government, Engineers approval was not obtained and it was not duly regarded for the works executed by the Panchayats Act.

13. From the above, it is clear whether there are no materials available on record to show that the petitioner misappropriated the money and the expenditure incurred by her over and above the permissible limit has been spent towards the welfare of the Village Panchayat only. Moreover, when the meeting was convened for the first time, by the Tahsildar pursuant to the show cause notice issued on 19.5.2012, all the 9 members backed the petitioner on 23.7.2012, when the Panchayat had approved the action of the President and it is for the welfare of the people, there should not have been any further proceedings by the respondents as per the judgment of this Court in K.Ramalingam (cited supra) and therefore, the proceedings are liable to be quashed based on that.

14. When there is no allegation of misappropriation of money, the issue is fully covered by the decisions of this Court in K.Ramalingam (cited supra), wherein it is useful to extract paragraph 11 as follows:-

"11. We find from the materials available on record that in the explanation submitted by him to the said show cause notice, he had requested the Collector to treat the expenditure incurred by him over and above the permissible limit as having been spent towards the welfare of the Village Panchayat. The said act had also been subsequently ratified. Despite the unanimous opinion expressed by the members of the Panchayat not to remove the appellant from the Office of the President, the

District Collector has taken a different view and had removed him from the Office of President. The learned Single Judge, relying upon a Full Bench decision of this Court in the case reported in The District Collector and Inspector of District Panchayat vs. Devi Parasuraman {2009 (4) CTC 609}, wherein, this Court has held that in the event of the Collector differing to remove the views expressed by the Village Panchayat and decides to remove the President, it is not only required to record the reasons for differing from the views expressed by the Village Panchayat but before taking any decision to remove the President, the Inspector of Panchayat is also required to provide further notice to the President of the Panchayat intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President, set aside the impugned order and directed the Collector to issue further notice to the President intimating the reasons for taking a different view than the one taken by the Village Panchayat and on consideration of the cause shown by the President, to proceed further. As per the decision of the Full Bench of this Court referred to supra, if the Collector takes a different view than the one taken by the Village Panchayat, which he had not done. Therefore, we are of the view that the order passed by the learned Single Judge so far as it relates to re-considering the matter by the District Collector is concerned, is set aside."

15. Even assuming for a moment that there is some justification for proceeding further, what is to be seen is whether all the requirements of law have been followed. First of all, the genesis started from the order passed by this Court in W.P.No.9538 of 2012 filed by one Palanivel. As pointed out by Mr.R.Margabandhu, learned counsel for the petitioner, even the copy of the order passed in the writ petition or the complaint given by the Palanivel were never given either to the petitioner or to the members of the Board. Secondly, the second respondent relied upon the report of the Assistant Director of Panchayat dated 7.5.2012 which has been referred in the show cause notice dated 19.5.2012 was not supplied to the petitioner for making effective explanation or representation/reply to the notice issued by the second respondent. That itself is fatal to the proceedings.

16. Though Mr.V.Jayaprakash Narayanan, learned Special Government Pleader pleaded that, for the first time the said contention is being raised and no prejudice is caused to the petitioner, the question of prejudice does not arise; what has to be done was whether done or not has to be seen. When the report form the basis for the issuance of the show cause notice, the same shall be supplied to the petitioner for making effective representation. In the absence of supply of the document, the petitioner's right to make effective representation or reply is violated. Therefore, at the threshold itself, the proceedings suffer.

17. As rightly pointed out by the first respondent in the revision that there was no compliance of mandatory Section 205(4) of the Act by reading over the notice, the explanation and the statement to the Panchayat Board Members and the satisfaction of the Collector to the members of the Panchayat Board as well as to the petitioner when the meeting was convened on 23.7.2012. Therefore, for violation of Section 205(4) of the Act also the proceedings are liable to be set aside.

18. The first respondent remanded the matter for fresh disposal to the second respondent. Even after remand, the notice of convening the Panchayat was given on 21.6.2013. A perusal of the said notice would disclose neither the notice nor the explanation given by the petitioner or other documents were annexed with the notice of convening dated 21.6.2013. For non-supply of those documents also, the said proceedings suffer.

19. After ascertaining the views of the Panchayat Board Members, the District Collector should have issued show cause notice to the petitioner giving the details of the decision taken in the Panchayat Board Meeting convened by the Tahsildar and the reports given by the Tahsildar. Without giving any notice nor supplying the document like report submitted by the Tahsildar, the extreme penalty of removal of President has been taken by the second respondent.

20. The Panchayat Board President is directly elected by the people and therefore, the second respondent is required to act with due care before taking a decision to remove the petitioner as President, as by one stroke of pen, the will and wish of the petitioner are to be overturned. The principle of natural justice requires giving supply of all the materials and giving opportunity to put-forth her view before passing final order by the second respondent. Therefore, the second respondent miserably failed to issue a final show cause notice to the petitioner before passing final order of removal as President.

21. Though Mr.V.Jayaprakash Narayanan, learned Special Government Pleader relying upon the Full Bench judgment in The

District Collector and Inspector of District Panchayat vs. Devi Parasuraman (cited supra), would submit that only when there is a difference between the views of the Collector and the Panchayat Board Members, notice is to be given, it is further more necessary, to issue notice to the petitioner, especially when the petitioner had not taken part in the Panchayat Board Meeting convened after remand. Hence, she was not in a position to know what was the decision taken by the Panchayat Board and what was the fresh report given by the Tahsildar to the first respondent and what was the subjective satisfaction the District Collector reached before passing the impugned order. Therefore, it is failure on the part of the second respondent in not giving final notice to the petitioner. In this connection, it is relevant to extract paragraph 45 of the decision of this Court in V.Kanagavalli Viswanathan (cited supra) as below:-

"45. As rightly contended by the learned counsel for the petitioner, the order dated 13.4.2010 of the first respondent states that the impugned order of the third respondent is based on the report of the sixth respondent and also on the report of the internal audit. If the third respondent relied on those reports, it is incumbent on the part of the third respondent to furnish those reports, so as to give reasonable opportunity to the petitioner to submit her explanation. Since the Act nowhere contemplates holding of a detailed enquiry giving opportunity to produce oral and documentary evidence and cross-examination on those materials, the third respondent Inspector has to furnish all the materials that were relied on for issuing the show cause notice, along with the show cause notice under Section 205(1) calling for explanation, so as to afford reasonable opportunity to the President to submit explanation. Further, the third respondent Inspector of Panchayats arrives at a conclusion to remove the President based on fresh materials i.e., the remarks given by the fourth and sixth respondents, those remarks should have been provided to the petitioner, before the third respondent acted on them in consonance with the principles of natural justice. On reaching conclusion to remove the petitioner based on certain materials, the third respondent forwarded the proposal to remove to the fifth respondent to ascertain the view of the Members of the Panchayat. Those materials relied on by the third respondent to arrive at tentative conclusion

to remove the petitioner, should be furnished. Likewise, when the third respondent took ultimate decision to remove the petitioner from the Office of President, after obtaining report from the fifth respondent, placed reliance on the report of the sixth respondent, the same should be furnished to the petitioner and her views should have been obtained before taking ultimate decision. That is, whenever the authority arrives at a conclusion adverse to a party based on certain materials, those materials should be furnished before arriving at a conclusion in consonance with the principles of natural justice as held by the Honourable Apex Court in NAGARJUNA CONSTRUCTION COMPANY LTD. VS. GOVERNMENT OF ANDHRA PRADESH reported in 2008 (16) SCC 276."

22. Therefore, in view of the violations and the lacuna, as pointed out by this Court, the order passed by the second respondent gazetted by the first respondent are not sustainable in law and the same are hereby quashed. Since the orders of the first and the second respondents are set aside, there is no prohibition to the petitioner to act and proceed as the President. Her position as the Veyyalur President is restored. Since the fourth respondent is holding the post of President in the absence of the petitioner, he is directed to handover the charge to the petitioner.

23. The writ petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

Svn.

To

1. The Secretary to Government,
Government of Tamil Nadu,
Department of Rural and Panchayat Raj Development,
Fort St. George,
Chennai-9.

WEB COPY

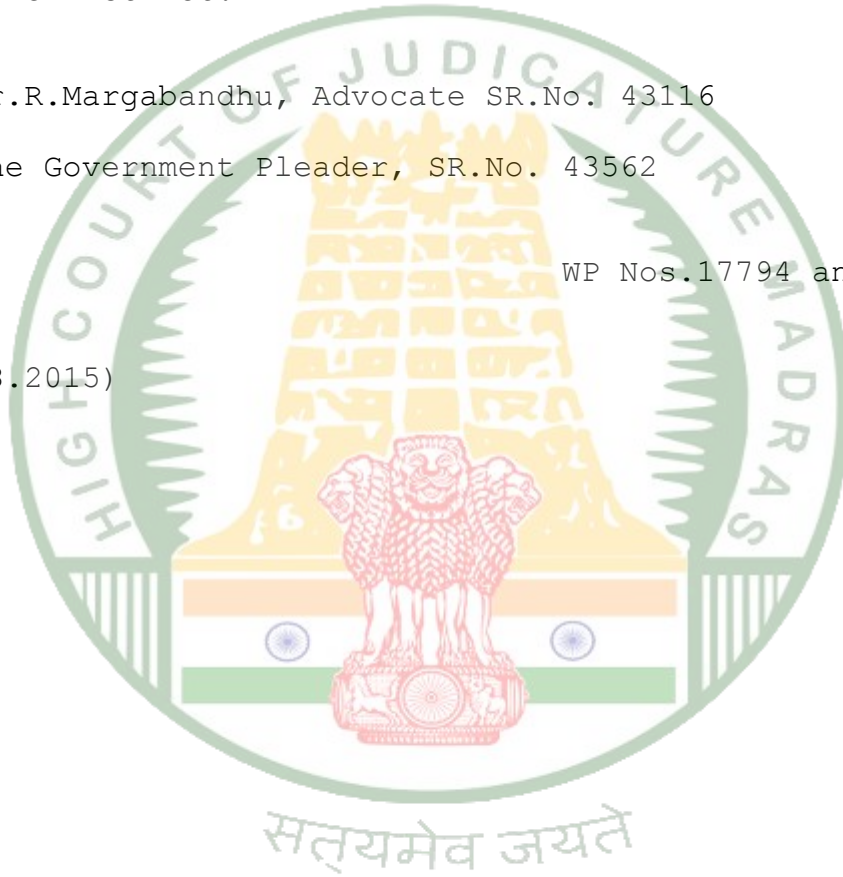
2. The Inspector of Panchayat
Cum District Collector,
Cuddalore District.
3. The Tahsildar,
Chidambaram Taluk,
Cuddalore District.
4. The Commissioner,
Keerappalayam Panchayat Union,
Cuddalore District.

1 CC to Mr.R.Margabandhu, Advocate SR.No. 43116

1 CC to the Government Pleader, SR.No. 43562

WP Nos.17794 and 25682 of 2013

GP (CO)
PSI (24.08.2015)



WEB COPY