



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P. (MD) No.14809 of 2015

and

M.P. (MD) .No.1 of 2015

P.Gunasekaran

... Petitioner

Vs.

The District Collector cum
Inspector of Panchayats,
Theni District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records relating to the impugned order of the respondent in Na.Ka.No.21020/2012/Q4 dated 10.08.2015 and quash the same.

For Petitioner : Mr.Veera Kathiravan
For Respondent : Mr.M.Rajarajan
Government Advocate

O R D E R

This Writ Petition has been filed for a Writ of Certiorari to call for the records relating to the impugned order of the respondent in Na.Ka.No.21020/2012/Q4 dated 10.08.2015 and quash the same.

2. The petitioner herein has been elected as a President of Kovilpatti Village Panchayat. He has been elected during the Public Panchayat Election held in the year 2011. Ever since that he has been holding the post of President. He belongs to Scheduled Caste Community and before he took charge as President, one P.Paraman, who is the son of previous President was in the post of Secretary of the Village Panchayat. During audit inspection by the Audit Officials of the Rural Development, they found that there were irregularities in the maintenance of the account, more fully account Nos.1 to 4 and drinking water accounts of the Village Panchayat and there was a final finding that there were irregularities in the Village Panchayat to the tune of Rs.60.33 lakhs. After the findings of the irregularities which were found against the said Paraman, the then Secretary of the Village Panchayat was not only tampering with records, but also by using the rubber stamp of the Village Panchayat, he has misappropriated a huge amount. During the course of enquiry, the



then Secretary Paraman has accepted his guilt and gave an affidavit and statement on 14.12.2012, that he is fully responsible for the shortcomings and misappropriation of funds and also indemnified the President and Vice President of the Village Panchayat to the claim of the Government. Similarly, he also gave a statement before the Assistant project Officer, Theni, that he was also ready to pay another sum of Rs.3,00,000/- which was misappropriated by him. After the said communication from the individual, the respondent herein initiated proceedings under Section 205 (1) (a) of Tamil Nadu Panchayat Act, seeking explanation from the Village President, the petitioner herein. After the said show cause notice, the respondent herein has taken over the cheque drawing power of the petitioner and also handed over the same to Block Development Officer of Aundipatti. After receipt of the said show cause notice, the petitioner gave a detailed representation, wherein he denied that the amounts were misappropriated by the Village Panchayat. After the explanation dated 12.07.2012, the Tahsildar, Aundipatti conducted a meeting under Section 205 of the Tamil Nadu Panchayat Act, to record the statement and views of the Village Panchayat wherein all the Councillors have unanimously resolved that the Village Panchayat is not responsible for the shortage and that only the Ex-secretary Paraman is responsible and the petitioner as well as the other Councillors are no way connected with the same. In the mean time, the said Paraman was subjected to departmental proceedings and a charge memo was issued by the respondent wherein specific charge was made against him and an Enquiry Officer was also appointed in the cadre of Assistant Director and he has given a detailed report about the enquiry conducted in the disciplinary proceedings against the said Paraman and finally, the said Paraman was dismissed from service on 06.05.2014. While so, when the entire findings of the respondent and conclusions are definitely against the previous Secretary Paraman, the respondent issued the impugned order in Na.Ka.No.21020/2012/Q4 dated 10.08.2015, wherein the respondent wanted to invoke power under Section 205 of the Tamil Nadu Panchayat Act, holding that the petitioner is also responsible for the misappropriation. Challenging the impugned order dated 10.08.2015, the present writ petition has been filed.

3. The respondent has also filed a detailed counter.

4. The only submission made by the learned counsel for the petitioner is that when already the Tahsildar, Aundipatti conducted a meeting under Section 205 of the Tamil Nadu Panchayat Act on 12.07.2012 and all the Councillors have unanimously resolved that the Village Panchayat is not responsible for the shortage and that only the Ex-secretary Paraman is responsible and the petitioner as well as the other Councillors are no way connected with the same, now the respondent issued the impugned order in Na.Ka.No.21020/2012/Q4 dated 10.08.2015, holding that the petitioner is also responsible for the misappropriation. Hence, the petitioner sought for quashing of the impugned order.



5. The learned counsel for the petitioner has also relied upon a judgment reported in **(2009) 7 MLJ 417 (FB) District Collector & Inspector of District Panchayat v. Devi Parasuraman**, wherein it has been held as follows:

(iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President.

6. From the reading of the dictum laid down in the above judgment, it could be seen that when the Inspector of Panchayat intends to proceed with under Section 205 of Panchayat Act by differing with the view of Panchayat, at first he has to record the reasons for differing from the views of the Village Panchayat and he is required to provide notice to the President intimating the reasons for difference and call for explanation and thereafter only he can proceed further under Section 205 of Tamil Nadu Panchayat Act.

7. Considering the ratio laid down in the above said decision which is squarely applicable to the facts of the present case, the impugned order is liable to be quashed. Hence, the writ petition is allowed and the impugned order dated 10.08.2015 is quashed and the respondent is at liberty to issue a fresh notice by intimating the reason for differing from the views of village panchayat and thereby calling upon the petitioner to submit his explanation and proceed further under Section 205 of the Panchayat Act. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

akv

To

The District Collector cum

Inspector of Panchayats, Theni District.

+1cc to Mr.Veerakathiravan, Advocate Sr No.49354

+1cc to Special Government Pleader SR No.49541

rg.07.10.2015/NGM-SS/ 3P/4C.