

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1641 of 2015
and M.P.No.1 of 2015

M.Sumathi

...Appellant

Vs.

- 1.The Inspector of Panchayats
The District Collector
Collectorate
Salem District, Salem
- 2.The Assistant Director of
Rural Development (Panchayats)
Collectorate
Salem, Salem District
- 3.The Block Development Officer
(Village Panchayat)
Veerapandi Panchayat Union
Salem District

...Respondents.

Writ Appeal filed against the order dated 28.08.2015 made in
W.P.No.7436 of 2015.

For Appellant : Mr.P.T.Perumal

For Respondents : Mrs.Sri Jeyanthi, Spl.G.P. For R1 and R2

Mr.K.Karthikeyan, Govt.Advocate for R3

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH,J.)

Heard the learned counsel for the appellant, learned Special Government Pleader, appearing for the 1st and 2nd Respondent and Mr.K.Karthikeyan, learned Government Advocate for the 3rd respondent.

2. It transpires that the appellant was the elected President of the Maramangalathupatty Panchayat and is not well-versed with the Ministerial function of the Panchayat and she was taking the advice of the then Panchayat Clerk, P.Subramanian till he was promoted as Junior Assistant and in the vacancy so caused, one C.Manickavasu was appointed, who in turn took the advice from P.Subramanian and assisted the appellant. In connection with the function of the village Panchayat, C.Manickavasu, the Panchayat Clerk, obtained a cheque dated 01.07.2013 for Rs.6,300/- signed by the appellant, for payment of salary to Overhead Tank Operators of the Panchayat. After one month, the appellant was shocked to see the bank passbook, as the same cheque was presented and a sum of Rs.96,300/- was drawn from the Panchayat account and this was encashed by C.Manickavasu, Panchayat Clerk. When the appellant came to know that the cheque

issued for Rs.6,300/- was used to encash the amount by prefixing the digit 9 before 6,300/-, she lodged a complaint before the 3rd respondent requesting to verify the bank account of the Panchayat and also to transfer the erring Panchayat Clerk.

3. The 3rd respondent directed the Officer concerned to take necessary action on the complaint, who conducted inspection and found that the amounts from the Panchayat Account had been transferred to the personal account of the former Panchayat Clerk P.Subramanian and cheque for Rs.23,17,184/- and a sum of Rs.15,72,227/- have been paid to the said P.Subramanian, by means of a self cheque of the Panchayat. While so, the appellant received a show cause notice dated 21.05.2014 alleging that a sum of Rs.19,96,293/- has been transferred to the account of the then Panchayat clerk during the period from 25.10.2011 to 19.09.2013. The appellant submitted her explanation on 29.05.2014 narrating the factual position and the action taken against the Panchayat Clerks.

4. It is the case of the appellant that without considering the explanation offered by her, the first respondent, by proceedings, dated 30.07.2014, directed the Tahsildar, Salem (West), to convene a

meeting for consideration of the notice, the explanation and the proposal for removal of the appellant. In the meeting convened, 10 members, out of 15, accepted the appellant's explanation and voted against the proposal to remove the appellant and five ward members, who belong to the rival parties supported the proposal for removal. Pursuant thereto, a show cause notice was issued on 03.01.2015, calling upon the appellant to submit her explanation. Subsequently, by the impugned order dated 28.02.2015, the 1st respondent disqualified the appellant from the post of Village President. As against which, the appellant approached this Court by way of W.P.No.7436 of 2015, which came to be dismissed by order dated 28.08.2015, by confirming the order of dismissal passed by the District Collector on the ground that there is admission on the part of the appellant herself that she signed the cheques taking assistance of Panchayat Clerk, who was subsequently suspended and that the appellant has not denied the fact.

5. On notice to the respondents in the present Writ Appeal, counter affidavit has been filed stating that the District Collector has directed the Assistant Director of Panchayat to conduct an enquiry and after initiation of the proceedings, an amount of Rs.15,97,868/- out of

19,96,293/- was remitted back into Panchayat Account on 15.10.2013, however, the difference of amount/loss, so far has not been remitted into Panchayat Accounts. It is also submitted that out of 15 members, only 5 members, have accepted for the dismissal of the appellant.

6. On a perusal of the order put to challenge herein, viz., the order dated 28.08.2015 passed in W.P.No.7436 of 2015, it is seen that the learned Single Judge was of the view that adequate opportunity was given to the appellant and that after due application of mind, the 1st respondent has taken the decision of removing the Panchayat President by obtaining the view of the majority of the ward members. The learned Single Judge, pointed out that there is allegation of misappropriation of Rs.90,96,000/- etc on the ground that the amount was siphoned off by the writ petitioner/appellant from the Panchayat Account. The learned Single Judge has taken into account the fact that the appellant signed the cheques and she also admitted the same and as such the act of the petitioner is depreciable. Accordingly the order of the District Collector was confirmed by the learned Single Judge.

7. It appears that the appellant is shown to be an illiterate lady, however, she herself complained of misappropriation of cheques,

alleged to have been made by the Panchayat Clerk. Admittedly, the misuse of cheques, wherein, the appellant's signature is found, does not amount to the appellant having knowledge of the contents found in the cheque. As repeatedly held by this court and other High courts that the admission of the signature in the cheque does not amount to admission of contents therein; here also, the cheques are signed by the appellant, but the amounts were filled up by the Panchayat Clerk or some body else. Hence, in our considered view, enquiry is to be initiated against the erring Panchayat Clerk who worked at the relevant point of time.

8. It is to be noted that the appellant herself has made a complaint against the Panchayat Clerk in respect of misappropriation of the amounts mentioned in the cheques signed by her, however, based on the said complaint, the 3rd respondent conducted an inspection and thereafter, the 1st respondent passed the order removing the appellant from the post of Panchayat President. In the above factual circumstances, all is not well in the order passed by the District Collector and the inference drawn by the learned Single Judge, is liable to be set aside.

9. It is true that the appellant has admitted the very fact of signing the cheques, however, the implication made by the respondents is that the appellant was the root cause for misappropriation of Rs.19,96,293/- and accordingly, the order of removal of the appellant from the post of Village President was passed. It is to be noted that in the event of proved misappropriation, the proposal of removal of the appellant would have been supported by the majority of ward members. However, it is not the case on hand. Even though the appellant has stated that those two Panchayat Clerks viz., P.Subramanian and C.Manickavasu are responsible for the illegalities, without holding any enquiry against the two individuals in the manner known to law, order of removal has been passed against the appellant herein. Hence, we are of the view that unless the specific allegation raised against the appellant is proved, the recourse taken to Section 205 of the Tamil Nadu Panchayat Act, 1994 is not sustainable. Further, we are of the considered view that there should be de novo enquiry as regards the misappropriation and a decision should be taken. It is also to be noted that the order passed by the District Collector was only based on the submissions made by the officials of the 3rd respondent and that per se would not in any way fortify the action of the 1st respondent. Accordingly, we direct the

respondents to conduct de novo enquiry into the allegations levelled against the appellant vis-a-vis the Panchayat Clerks to find out the absolute truth and, thereafter, take appropriate action against the erring delinquents. Since it is submitted by the learned Government Advocate appearing for the 3rd respondent that the Panchayat Clerk who worked at the relevant point of time, misused their position and have committed some misdeeds, we are of the view that a proper action has to be initiated against those erring Panchayat Clerks and in this regard, a thorough enquiry has to be held.

10. With the above observation, the Writ Appeal stands allowed by modifying Single Judge order. The matter is remitted back to the respondents 1 to 3 to conduct de novo enquiry and to take appropriate action in accordance with law. No costs. Consequently, connected MP is closed.

(H.G.R., J.) (M.V.M., J.)

Index: Yes
Internet: Yes
nvsri

21.06.2016

To

- 1.The Inspector of Panchayats,
The District Collector
Collectorate, Salem District,
Salem

- 2.The Assistant Director of
Rural Development (Panchayats)
Collectorate
Salem, Salem District

- 3.The Block Development Officer
(Village Panchayat)
Veerapandi Panchayat Union
Salem District

HULUVADI G. RAMESH,J.
and
M.V.MURALIDARAN,J.

nvsri

W.A.No.1641 of 2015

21.06.2016