

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-02-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.21693 of 2011

L. Dayanidhi

.. Petitioner

Vs

1. The State of Tamil Nadu
Represented by Principal Secretary to Government
Local Administration Department
Fort St. George
Chennai - 600 009

2. The District Collector - cum -
Inspector of Panchayats
Villupuram District.

.. Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records relating to the order of the first respondent dated 31-08-2009 bearing Ref. G.O.(D) No.508, Rural Development and Panchayat Raj (P.R.N.) Dept. and the order of the second respondent dated 07-01-2009 bearing Ref.Na.Ka.No.A6/5583/2007 and quash the same.

For petitioners : Mr. Bharatha Chakravarthy
For respondents : Mr. R.Rajeswaran, Spl.G.P.
for RR1 and 2

ORDER

The petitioner was elected as a Councillor from Ward II of Palapattu Village in the Panchayat Election held on 15-10-2006. Subsequently, by way of internal election, the petitioner was elected as a Vice President of the said Village Panchayat. On 27-06-2008, a charge memo was served on the petitioner alleging that certain amounts of the Panchayat funds have been misappropriated and the petitioner was directed to submit his reply.

2. The petitioner would state that he has submitted a detailed reply on 19-07-2008, but had forwarded the same to the Assistant Director of Panchayats by thinking that it has to be sent through the Assistant Director as he is the proper channel. However, it appears that the said communication did not reach the second respondent, who by proceedings dated 07-12-2008

issued a notice to the petitioner stating that no explanation has been received for the charge memo dated 27-06-2008 and therefore, it is taken that the petitioner has no explanation to offer, but, however, with a view to afford an opportunity to the petitioner, date was fixed for appearance of the petitioner to be heard in person. On the said date, the petitioner is said to have appeared before the second respondent and placed for consideration of the second respondent that there is absolutely no misappropriation of the Panchayat funds. Further, it was brought to the notice of the second respondent that the petitioner has given a complaint against the President of the Panchayat that there has been misappropriation of the Panchayat funds given by the Central Government under various Schemes and such misappropriation was done by the President and the Inspecting Team also found that the President has misappropriated those funds. However, the second respondent by order dated 07-01-2009 removed the petitioner from the post of Vice President of the Panchayat Union. Earlier, the District Collector appears to have not been satisfied with the petitioner's explanation and has directed the Tahsildar to convene a Meeting of the Panchayat on 01-11-2008, which ultimately resulted in the impugned order dated 07-01-2009.

3. It is not in dispute that in the Meeting of the said Panchayat the elected Councillors did not support the proposal of the District Collector to remove the petitioner from the Office of Vice-President and accordingly, a Resolution came to be passed which was placed before the District Collector. Therefore, the District Collector had to exercise his discretion in accordance with Section 206(1) of Tamil Nadu Panchayats Act, 1994 and decide as to whether the petitioner has to be removed from the Office of Vice President. The District Collector on 07-01-2009, holding that the views of the Panchayat as recorded in the Meeting held on 01-11-2008 is not acceptable, since the ward members and others had lodged complaint against the petitioner and subsequently, they have backtracked on the same and the same is not acceptable. Thereafter, the petitioner has filed a revision before the first respondent which was rejected by order dated 31-08-2009 and challenging these orders, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner reiterated the factual contentions referred to above and submitted that the impugned order in the writ petition is bad in law, in the light of the decision of the Honourable Full Bench in the case of District Collector and Inspector of District Panchayat Vs. Devi Parasuraman reported in 2009 (4) CTC 609. It is submitted that since the Panchayat decided to pass a Resolution against the proposal to remove the petitioner from the Office of the Vice President, before the District Collector takes a different view, the petitioner is entitled to have an opportunity.

5. In the light of the decision of the Honourable Full Bench, the learned Special Government Pleader appearing for the respondents submitted that the District Collector has exercised his discretion in terms of Sub-Section 11 of Section 205 of the Act and such exercise of his discretion is proper and valid on account of the charge of misappropriation of funds.

6. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, it is evident that the District Collector has not given any opportunity to the petitioner to submit the explanation, when he/she proposes to take a different view from that of the elected Councillors in the Meeting convened on 01-11-2008.

7. The Honourable Full Bench held as follows:

"17. In the light of the discussions made above, we summarise our views as follows :-

- i)
- ii) ...; and
- 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."

Applying the decision of the Honourable Full Bench to the facts of the case, the second respondent is required to record reasons for differing with the views of the Panchayat and before taking a decision to remove the elected person from Office, the District Collector is required to provide further notice to the elected person intimating the reasons for difference and can issue notification only on consideration of cause, if any shown, by the elected representative.

8. In the instant case, this procedure has not been adopted as the District Collector has brushed aside the stand taken in the Meeting of the Village Panchayat as unbelievable as it was held that though complaint was given earlier they have gone back on the complaint and accepted the candidature of the Petitioner. This view could have been taken only after notice to the petitioner in the light of the decision of the Honourable Full Bench.

9. In the light of the above, the impugned order has to be held bad in law. Under normal circumstances, this Court would have granted liberty to the second respondent to proceed from the stage where the defect has occurred. However, since the term of office is already over, such direction is unnecessary.

10. In the result, the writ petition is allowed. The impugned orders are quashed. No costs. Connected M.P.Nos.1 and 2 of 2011 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government
Local Administration Department
Fort St. George
Chennai - 600 009
2. The District Collector - cum -
Inspector of Panchayats
Villupuram District.

+1cc to the Government Pleader, S.R.No.10603

+1cc to M/S.Sai Bharath & Ilan, Advocate, S.R.No.10304

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ca(CO)
srg(16/03/2016)

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