

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
02.03.2016	09.03.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.20046 of 2015

M.Krishnamoorthy ... Petitioner

Vs

1.State of Tamil Nadu,
Rep., by its Secretary to Govt.,
Rural Development & Panchayat Raj (PR-4) Dept.,
Secretariat, Chennai - 600 009.
(R1 amended as per order dated 18.01.2016
by TSSJ in WMP 735/16 in WP 20046/2015)

2.The Inspector of Panchayat/District Collector,
Dharmapuri District.
Dharmapuri. ... Respondents

Prayer :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the proceedings made in G.O.(D).No.319, Rural Development and Panchayat Raj (PR-4) Department, dated 10.06.2015, on the file of the first respondent confirming the orders passed in Na.Ka.No.1139/2014/A1, dated 24.11.2014, on the file of the second respondent (published in Tamil Nadu Government Gazette Extraordinary No.248, dated 26.11.2014) quash the same.

For petitioner ... Mr.S.Doraisamy

For Respondents .. Mr.A.L.Somayajee Advocate General
Assisted by
Mr.R.M.Muthukumar
Additional Government Pleader

O R D E R

The petitioner seeks for issuance of a Writ of Certiorari, to quash the order passed by the second respondent, the Inspector of Panchayat, dated 24.11.2014, removing the petitioner from the post of President of Molayanur Village Panchayat, which order was confirmed in revision by the first respondent by G.O.(D).No.319, dated 10.06.2015.

2. The petitioner an Engineering Graduate belonging to a Schedule Tribe community, contested for the post of President of the Molayanur Village Panchayat, (hereinafter referred to as the 'Panchayat'), which post was reserved for Schedule Tribe community. The petitioner was successfully elected as the President of the Panchayat during October 2011. It appears that the petitioner and the Vice President of the Panchayat were not seeing eye to eye and the petitioner would allege that he was discriminated owing to his communal status, which lead to lodging of criminal complaint with the local police under the provisions of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, which is being investigated. It is further alleged that the Vice President of the Panchayat was a close relative of a highly placed dignitary in the ruling party and there was a pressure exerted on the petitioner to withdraw the criminal complaint, which the petitioner refused to do. Therefore, it is alleged that the Vice President refused to co-operate in signing the Panchayat cheques, which lead to a complaint being filed by the petitioner to the second respondent requesting to take action against the Vice President. Since no action was taken on the said representation, the petitioner filed a Writ Petition in W.P.No.17722 of 2014, to direct the second respondent to appoint some other person in the place of the Vice President to be the co-signatory of the Panchayat cheques along with him. At that juncture, the second respondent passed an order on 05.07.2014, taking away the petitioner's right to sign the Panchayat cheques in the capacity of the President of the Panchayat. This order was challenged by the petitioner by filing W.P.No.18407 of 2014, and an order of interim stay was granted on 14.07.2014, which is said to have been extended from time to time. Alleging non-compliance of the order of the interim stay, the petitioner filed Contempt Petition No.2695 of 2014 and the Contempt Petition was also adjourned, while so, the second respondent initiated proceedings against the petitioner under Section 205 of the Tamil Nadu Panchayats Act, 1994, (hereinafter referred to as the 'Act'), this ultimately lead to the passing of the order, dated 24.11.2014, removing the petitioner from the post of President of the Panchayat. Challenging the said order, the petitioner preferred a revision petition before the first respondent, which

was dismissed by order dated 10.06.2015. These orders are impugned in this Writ Petition.

3. Mr.S.Doraisamy, learned counsel appearing for the petitioner submitted that the second respondent issued a show cause notice, on 21.07.2014, calling upon the petitioner to submit his explanation for 24 charges. The petitioner is stated to have submitted an explanation on 07.08.2014, and the Tahsildar issued notice dated 29.10.2014, convening the meeting of the Panchayat on 10.11.2014, to consider the removal of the petitioner from the post of President and to obtain the views of the Panchayat in which the proceedings of the Assistant Director of village Panchayats, dated 25.06.2014, and the recommendations of the Block Development Officer were relied upon. The petitioner requested for postponement of the meeting on the ground of ill-health, which was rejected and the meeting was held on 10.11.2014. It is submitted that the Tahsildar read out the notice dated 24.10.2014, obtained the views of the Panchayat and submitted his report, based on which the second respondent ordered for removal of the petitioner from the post of President on the same day. It is submitted that a perusal of the minutes of the meeting as recorded by the Tahsildar would show that the show cause notice dated 24.10.2014, alone was read at the meeting and the petitioner's explanation dated 07.08.2014, was not read out to the members, though Section 205(8), mandates the same to be read. Thus, by suppressing the petitioner's explanation, the Tahsildar had violated the procedure under the Act. Further, it is submitted that in the notice dated 29.10.2014, issued by the Tahsildar, there is no mention about the show cause notice issued by the second respondent or the petitioner's explanation to the charges. Further, it is submitted that the meeting was concluded at 1.00pm on 10.11.2014 and on the same day, the Tahsildar submitted report to the second respondent and the second respondent on the very same day, issued show cause notice proposing to remove the petitioner from the post of President and this would show that the entire matter was done in great haste with a view to some how remove the petitioner from the post of President. It is further submitted that there is no charge of misappropriation and the allegations are only procedural lapses and without evaluating the petitioner's explanation, dated 14.11.2014, the impugned order dated 24.11.2014, was issued.

4. It is submitted that in terms of Section 205(1), the second respondent can remove the President from office on his own motion or on representation made by 2/3rd of the members of the Panchayat and after following the procedure laid down under sub-section (2) to (10) of Section 205, action can be initiated and in the instant case, action was not initiated suo-moto by

the second respondent nor based on representation of the Ward Members of the Panchayat and hence, convening of the meeting itself is illegal. Further, it is submitted that the report of the Assistant Director of Panchayat could not have formed the basis of the action being initiated under Section 205 of the Act. Further, it is submitted that the allegations in the charge memo do not relate to misappropriation nor it is the case that the petitioner wilfully omitted or refused to carry out or disobeyed the provisions of the Act or Rules and therefore, action could not have been taken for removal of the petitioner from the post of President. The learned counsel relied upon the decision of this Court in the case of V.Kasthuri & Anr., vs. The District Collector/Inspector of Panchayats Villupuram & Ors., reported in CDJ 2015 MHC 3325, V.Kanagavalli Viswanathan vs. The Chief Secretary to Govt., & Ors., in W.P.No.10676 of 2010, dated 20.07.2010 and the decision of the Hon'ble Supreme Court in the case of Tarlochan Dev Sharma vs. State of Punjab, reported in (2001) 6 SCC 260.

5. Mr.A.L.Somayajee learned Advocate General appearing for the respondents submitted that the complaint with serious allegations against the petitioner was received from eight Ward Members and the Vice President of the Panchayat and that was the basis for action being initiated against the petitioner. It is submitted that the second respondent issued notice calling for explanation as to why the views of the Panchayat should not be accepted and the Tahsildar submitted his report on 10.11.2014 and on the same day, show cause notice was issued and there is nothing wrong in it, as the Act does not prescribe any minimum or maximum time limit for receiving report from the Tahsildar and action being taken on the same. Further, it is submitted that after considering the reply of the petitioner, the second respondent issued the order of removal and this has been done after following the procedure stipulated under Section 205(2) to (10) of the Act. Therefore, it is the submission of the learned Advocate General that action was initiated by the second respondent under Section 205(1) of the Act, based on complaints received from eight Ward Members and the Vice President and it is not a suo-moto action. By referring to paragraph 14 of the counter affidavit, it is submitted that the Tahsildar issued notice dated 24.10.2014, under Section 205(4) of the Act and the Tahsildar read out the notice of the Inspector of Panchayat, the explanation of the President and the proposal for removal of the President for consideration as soon as the meeting was convened as per Section 205(8) of the Act. Further, it is submitted that the petitioner in order to prevent the meeting being conducted, forcibly took away the minutes book and other records from the Secretary of the Panchayat and complaint was lodged with the Police in Criminal No.217 of 2014. It is submitted that the

petitioner could not convene the Panchayat meeting for more than six months, as he did not have the support of the Ward Members and the welfare measures could not be carried out and all the matters came to a stand still. Therefore, it is submitted that the order of removal passed by the second respondent as confirmed by the first respondent is perfectly legal and valid and there is no error or illegality in the same.

6. The learned Advocate General referred to the documents in the typed set of papers filed by the learned Additional Government Pleader containing the copies of the representations of the Members of the Panchayat, the report of the Assistant Director, dated 25.06.2014, the proceedings of the second respondent, dated 05.07.2014, the charge memorandum dated 21.07.2014, the petitioner's explanation, dated 07.08.2014, the copies of the orders passed in the earlier Writ Petitions, the show cause notice, dated 10.11.2014, the explanation given by the petitioner to the said show cause notice on 14.11.2014 and the impugned orders. It is further submitted that the second respondent has passed the order, dated 17.06.2014, by suspending the Panchayat Secretary.

7. Heard the learned counsels appearing for the parties and perused the materials placed on record.

8. Before I proceed to go into the contentions raised in the present Writ Petition, it would be first necessary to take note of the procedure to be followed while initiating action under Section 205 of the Act.

9. The procedure to be followed under Section 205 of the Act, after show cause notice is issued to the President of the village proposing to remove him from the elected office would be relevant for this case. The procedure required to be followed by the Inspector of Panchayat is to consider the explanation given by the President of the Panchayat to the show cause notice, take a decision as to whether the explanation is acceptable and if not, whether the matter requires exercise of power under Section 205(1) of the Act. After recording reasons in writing and communicating the same to the aggrieved person, the Collector has to direct the Tahsildar to convene a meeting of the Panchayat. The procedure the Tahsildar has to follow while convening the meeting has been set out in Section 205(8) of the Act wherein he is required to comply with three requirements namely, (i) to read to the village panchayat, the notice of the Inspector; (ii) the explanation submitted by the President; and (iii) the proposal for the removal of the President. The Tahsildar on doing so, shall not participate in the discussion in the meeting, but is required to record the

views of the Panchayat, which are in fact the minutes of the meeting which has to be placed before the District Collector for consideration. If the above is followed, then the procedural requirement for invoking Section 205(1) of the Act, would stand complied with.

10. Therefore, firstly, it has to be seen as to whether this procedure especially the procedure to be followed by the Tahsildar under sub-section (8) of Section 205 of the Act has been followed.

11. The learned Advocate General read out the averments in paragraph 14 of the counter affidavit and stated that the Tahsildar has read out the notice of the Inspector, the explanation of the President (Petitioner) and the proposal for removal of the President for consideration in the meeting and submitted that the procedure under sub-section (8) of Section 205 of the Act, has been scrupulously followed. On a careful reading of the paragraph 14 of the counter affidavit, the factual position appears otherwise, since it is stated that the Tahsildar issued notice dated 24.10.2014, under Section 205(4) of the Act and sub-section (4) has been extracted, after extracting the said provision, it is stated that "Accordingly, the same was complied with". Thus, the stand taken in the counter affidavit, is that the Tahsildar complied with Section 205(4), the remaining averments in paragraph 14 of the counter affidavit does not state that the Tahsildar complied with the requirements under sub-section (8) of Section 205, but it only states what Section 205(8) contemplates. Therefore, the averment in paragraph 14, does not specifically state that Section 205(8) has been complied with. In order to make things further clear this Court call for the original files which are in three volumes and the original minutes of the meeting is found in the files apart from the same having been furnished in the typed set of papers filed by the Writ petitioner.

12. As pointed out earlier the Tahsildar is not entitled to participate in the discussion, but he is required to record the views of the Panchayat by recording the minutes of the meeting. Therefore, the minutes of the meeting should specifically state as to what transpired in the meeting. This is very vital, since there is a statutory obligation on the part of the Tahsildar to comply with the certain mandatory requirements. Therefore, the requirements if complied with had to be specifically stated by the Tahsildar. If it is stated and it is disputed by the President, then the onus is on the President to establish that though the Tahsildar recorded that he complied with all the three requirements under Section 205(8) of the Act, yet the same were not complied with. However, in the instant case, the

minutes do not state that the petitioner's explanation was read out in the meeting. This has not been able to be established by the respondents by producing the original files nor can it be improved at this juncture, since the minutes speaks for itself. This inherent defect in the procedural aspect goes to the root of the matter vitiating the entire proceedings.

13. The next aspect which has to be looked into is whether the action initiated by the District Collector was either suo-moto or on complaint of 2/3rd of the members or on based on any other material/report. We need not labour much to decide this issue and it would suffice to peruse the show cause notice, which shows that the entire proceedings emanated, pursuant to the report of the Assistant Director, Panchayats and Assistant Director (Audit), dated 25.06.2014. Thus, the action under Section 205(1) of the Act was not a suo-moto, action nor based on a complaint from the majority of the members.

14. The learned Advocate General by referring to the counter affidavit submitted that eight Ward Members and the Vice President have submitted complaints levelling serious allegations against the petitioner. Therefore, this Court wanted to peruse those complaints. In volume three of the files in flag (9) running page 971, there are undated statements received by the Tahsildar, Papirettipatti, which have been recorded on 10.11.2014. Obviously, these statements could not have been the basis for action under Section 205, as they were recorded only on 10.11.2014 and this is the date on which the Tahsildar submitted report to the second respondent. The files do not disclose that the report of the Tahsildar, dated 10.11.2014, which was the basis for the show cause notice dated 10.11.2014, was furnished to the petitioner and the annexure to the show cause notice is the minutes of the meeting held on 10.11.2014. That apart, it has been admitted by the respondents in the impugned order that based on the reports obtained from the Assistant Director Panchayats and Assistant Director Audit, charges have been framed against the petitioner. Thus, the very basis of the action under Section 205(1) of the Act was neither a suo-moto action nor based on the complaints of the Ward Members and Vice President, but based on the reports submitted by the officials. If that is so, then the copies of the report ought to have been furnished to the petitioner, when the show cause notice was issued. This having not been done amounts to violation of principles of natural justice.

15. That apart, though 24 charges have been framed against the petitioner, none of them pertained to misappropriation of funds. In fact, no such contention has been raised in the counter affidavit also. Therefore, the allegation largely revolves upon failure to exercise power or on issues, which have

been pointed out by the Assistant Director of Panchayat and Assistant Director of Audit, who have said to have conducted inspections on the directions of the District Collector. Though, the impugned order states that complaints have been received from eight Ward Members and Vice President on 02.05.2014, 20.05.2014, 21.06.2014, etc., that those complaints did not form basis for action being initiated under Section 205 of the Act, which commenced with the issuance of the show cause notice.

16. That apart, it has to be seen as to whether the respondents have specifically made out a case against the petitioner of wilfully failing to perform an act or there was a deliberate omission to perform his duties as precedent. Neither the show cause notice nor the impugned order of removal or the order passed by the first respondent on revision states that the petitioner wilfully abused his powers vested with him or deliberately omitted to do certain acts. In fact the case of the petitioner is that the Vice President was not co-operating with him and for certain other reasons, action was initiated against him. The fact that the petitioner had submitted a complaint against the Panchayat Secretary one Muthu is not disputed. However, it was put in cold storage and only on 17.06.2015, the Personal Assistant to the Collector passed an order suspending the Panchayat Secretary Muthu on the ground that the enquiry into the grave charge against him is contemplated based on direction issued by the first respondent. However, the counter affidavit does not specifically state as to why no action was initiated till 17.06.2015, when the District Collector was prompt enough to take action and issue show cause notice to the petitioner on 10.11.2014, i.e., the same date on which the Tahsildar convened the meeting in the forenoon and said to have submitted his report by afternoon and surprisingly the show cause notice was served on the petitioner on the same day i.e., 10.11.2014. Thus, it can be safely presumed that the Panchayat Secretary was shielded for reasons best known and only after the Government issued directions in G.O.(D).No.319, dated 10.06.2015, the District Administration, sprung into action and suspended the Panchayat Assistant.

17. For all the above reasons, it is clear that there has been gross procedural irregularities in the manner in which the entire proceedings have been dealt with and the petitioner having been elected to the office had to be dealt with strictly in accordance with the provisions of the Act and any default or deviation there from, should be viewed seriously and no leniency can be shown on those aspects, since an elected person is sought to be unseated by an executive action.

18. In the result, the Writ Petition is allowed and the impugned proceedings are quashed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

pbn

To

1.The Secretary to Govt.,
Rural Development & Panchayat Raj (PR-4) Dept.,
Secretariat, Chennai - 600 009.

2.The Inspector of Panchayat/District Collector,
Dharmapuri District.
Dharmapuri.

+1 cc to The Government Pleader, sr.15767
+1 cc to Mr.S.Doraisamy, Advocate, sr.15288
+1 cc to Mr.R.M.Muthukumar, Advocate, sr.15263

W.P.No.20046 of 2015

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