

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 18332 of 2016
&
W.M.P. No. 16037 of 2016

P. Thangammal

..Petitioner

Vs.

1. The District Collector/Inspector of Panchayat, Perambalur District.
2. The Block Development Officer, (Village Panchayats), Panchayat Union, Veppanthattai, Perambalur District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records pertaining to the order passed by the 1st respondent dated 06.05.2016 in Na.Ka.A3/386/2016 and quash the same.

For Petitioner :: Mr.C. Selvaraju for
M/s. C.S. Associates

For Respondents:: Mr.V. Jayaprakash Narayanan,
Special Govt. Pleader for R1
Mr.R. Govindasamy,
Special Govt. Pleader for R2

O R D E R

The petitioner is the President of Kariyanoor Panchayat, Veppanthattai Union and Taluk, Perambalur District, elected during the year 2011. In February, 2016, there was an inspection by the Deputy Block Development Officer (Audit), Panchayat Union, Veppanthattai. The said officer is said to have filed a report that the 1st respondent had issued a show cause notice on 04.04.2016 calling for an explanation making allegations of misappropriation in the purchase of water supply materials, street lights, erection of RCC bench, repayment of deposit amount and in carrying out maintenance works without proper vouchers and measurement books. The petitioner gave an elaborate explanation

on 25.04.2016. However, not satisfied with the explanation given by the petitioner, the impugned order dated 06.05.2016 has been passed taking away the cheque signing power of the petitioner. Hence, the present writ petition.

2. Heard Mr. C. Selvaraju, learned Senior Counsel for the petitioner, Mr.V. Jayaprakash Narayanan, learned Special Government Pleader for the 1st respondent and Mr. R. Govindasamy, learned Special Government Pleader for the 2nd respondent.

3. Learned Senior Counsel for the petitioner would submit that details, by way of an elaborate explanation, to the queries raised by the 1st respondent in the show cause notice were given by the petitioner and further, in the explanation dated 25.04.2016, the petitioner has also called upon the respondents to verify the records as all the records are available with the Panchayat. However, without giving any reasons, a cryptic order has been passed. Section 203 of the The Tamil Nadu Panchayats Act, 1994, would not apply to the petitioner, in the facts and circumstances of the case and therefore, the impugned order cannot be sustained.

4. However, Mr.V. Jayaprakash Narayanan, learned Special Government Pleader for the 1st respondent and Mr.R. Govindasamy, learned Special Government Pleader for the 2nd respondent would submit that Section 203 of the Tamil Nadu Panchayats Act, 1994, is an emergency provision to be invoked when there is likelihood of misappropriation of Panchayat Funds. In this case, the petitioner is charged with allegation of misappropriation and therefore, allowing the petitioner to have the cheque signing power will be detrimental to the interest of the Panchayat and therefore, Section 203 of the said Act has been rightly invoked. Further, it is submitted that though there is no provision under Section 203 of the Act to issue a show cause notice, the 1st respondent has issued the show cause notice and complied with the principles of natural justice. Therefore, according to them, the writ petition is liable to be dismissed.

5. Heard both sides.

6. A perusal of the records, especially, the show cause notice issued by the 1st respondent dated 04.04.2016 would reveal that the 1st respondent relied upon the inspection report of the Deputy Block Development Officer (Audit), Panchayat Union, Veppanthattai, dated 23.02.2016 for issuance of the show cause notice. However, there is no record available or produced by the respondents to show that the said report was served upon the petitioner. When a show cause notice is issued and when the said show cause notice is based on certain materials and documents, it is the bounden duty of the issuing authority to furnish or provide such materials or documents to the delinquent so that

he/she would be in a position to give a reply effectively. In this case, there is no proof with regard to furnishing of the report of the Deputy Block Development Officer dated 23.02.2016 to the petitioner. Therefore, on this ground alone, the entire proceedings, right from issuance of show cause notice, is liable to be quashed.

7. Secondly, the petitioner has given a detailed explanation on 25.04.2016 stating that when the officer made an inspection, all the documents and books were not verified. If all the documents and books had been verified, the allegation of misappropriation would not have been available to the respondents. She has stated in the reply that all the documents are available with the Panchayat Union and they can be verified by the respondents. However, without verification or without making any re-inspection, the impugned order has been passed. Even on that score, the impugned order suffers.

8. Furthermore, when a detailed reply has been given to the show cause notice, a cryptic impugned order has been passed. Except stating that certain acts of misappropriation have been done by the petitioner, no detailed discussion has been made in the impugned order. This only denotes lack of application of mind. Even on that score, the impugned order is liable to be quashed.

9. It is contended on behalf of the respondents that Section 203 of the said Act is an emergency provision and there is no necessity to issue show cause notice. Though it is an emergency provision, the cheque signing power is an important power vested with the elected President of a Local Body and without giving a show cause notice, simply stating that "by invoking emergency provisions", the cheque signing power cannot be taken away. Even in the absence of any show cause notice contemplated under the statute, taking into account the nature of the order passed, namely, taking away the cheque signing power, it has to be deemed that the principles of natural justice have to be complied with and even though it may not be explicitly specified in the statute, it is embedded in the statute itself.

10. As far as the case on hand is concerned, the show cause notice has been issued. But, it appears to be an empty formality, since, without considering the details given by the petitioner in her explanation, a cryptic order has been passed and it only goes to show that with the sole aim of taking away the cheque signing power of the petitioner, the said order has been passed.

11. From 2011 onwards, the petitioner has been discharging the functions as Panchayat President and so far, no complaints have been raised against her. When the elections are around the corner, the issuance of show cause notice and the consequential

order taking away the cheque signing power only appears to be an attempt to malign the petitioner. The entire exercise has been done hurriedly and therefore, the show cause notice as well as the impugned order are liable to be quashed and they are accordingly quashed. The writ petition is allowed. No costs. It is made clear that this Court quashed the entire proceedings only on the basis that the procedure contemplated under the Act has not been followed. Connected W.M.P.s are closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

nv
To

1. The District Collector/Inspector of
Panchayat,
Peramabalur District.
2. The Block Development Officer,
(Village Panchayats),
Panchayat Union, Veppanthattai,
Perambalur District.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.41333
+1cc to Mr.R. Govindasamy, Advocate, S.R.No.41001
+1cc to the Government Pleader, S.R.No.41501

BVR(CO)
EU(08/08/2016)

सत्यमेव जयते W.P. No. 18332 of 2016

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