

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.A.No.2373 of 2013
and
M.P.No.1 of 2013
and
C.M.P.No.233 of 2016

G.M.Ganesan ... Appellant/petitioner

Versus

1. The Inspector of Panchayats
District Collector,
Cuddalore District.
2. The Revenue Tahsildar,
Chidambaram Taluk,
Cuddalore District.
3. Vice President,
Usoopur Village Panchayat,
Chidambaram Taluk,
Cuddalore District. ... Respondents/respondents

Prayer : Writ Appeal against the order of this Court dated 05.09.2013 passed in W.P.No.4547 of 2013.

WP.No.2373 of 2013: Writ Petition Filed Under Article 226 of India Constitution for issuance of a Writ of Certiorari to call for the records of the impugned order of the 1st Respondent dated 14.2.2013 bearing Na.Ka.No.A8/2085/2012 and quash the same.

For Appellant : Mr.C.Prakasam
For Respondents : Mr.R.Ravichandran, AGP

JUDGMENT

(Judgment of the Court was delivered by K.Ravichandrababu,J)

This writ appeal is filed against the order dated 05.09.2013 passed in W.P.No.4547 of 2013, in dismissing the writ petition filed by the writ petitioner, who is the appellant before this Court, challenging the order passed by the Inspector of Panchayats in removing the appellant from the post of President of the Village Panchayat.

2. We have heard the learned counsel appearing for the appellant and the learned Additional Government Pleader appearing for the respondents and perused the order passed by the learned Single Judge as well as the materials placed before this Court.

3. It is seen that the order challenged in the writ petition passed by the District Collector removing the petitioner from the post of President of the Village Panchayat came to be passed in pursuant to an enquiry conducted by the Tahsildar, after convening a meeting of the members of the Panchayat in pursuant to the direction of the District Collector dated 08.06.2012. Such meeting was conducted by the Tahsildar under Section 205(1)(a) of the Tamil Nadu Panchayat's Act, 1994 for getting the opinion of the Panchayat members on the charges framed and the proposal of dismissing the appellant/writ petitioner from the post of President.

4. The main contention of the appellant/writ petitioner before us is that before convening such meeting by the Tahsildar, no material papers including the charges levelled against the appellant were served on the members of the Panchayat individually so as to enable them to express their opinion on analysis of facts and circumstances by going through such materials. Thus, it is contended that without circulating the material papers well in advance, only at the time of holding the meeting, the Tahsildar, has read out the charges levelled against the appellant and also the proposal of punishment sought to be imposed on him. Therefore, it is contended by the learned counsel for the appellant that such procedure adopted by the respondents in holding the meeting is in violation of principles of natural justice and is directly against the decision of the Division Bench of this Court reported in 2015-3-LW 399 (R.Sivasamy vs. The District Collector, Coimbatore and others), wherein, the Division Bench has observed in paragraph Nos.7 and 8 as follows:-

"7 We have examined the provisions of Section 205 of the Act. We do not find that there is any provision qua supply of the relevant materials, i.e., representation, explanation and opinion for consideration of notice and expalantion, before removal of the President in a meeting convened by the Tahsildar under provision of sub-section (3) of Section 205 of the Act. Supply of requisite material is a pre-condition for considering the case in accordance with the principles of natural justice, as held by the Supreme Court in Ravi Yashwant Bhoir (supra). The appellant/writ petitioner against whose removal, a meeting is to be convened, is entitled to all the relevant materials, as aforestated. The other members are also entitled to the relevant materials for effective and proper consideration and decision.

8 We accordingly direct the Tahsildar, the third respondent herein, that while issuing a notice for convening a requisite meeting of the Panchayat Union, he shall ensure that all the participants, including the elected President, are supplied with the relevant materials on which there is a proposed discussion and a decision is to be taken thereon. To this limited extent, the order passed by the Writ Court is modified".

5. We find force in the submission of the learned counsel for the appellant when we perused the report of the Tahsildar dated 22.07.2012 made available in the typed set of papers. From its perusal, it is evident that the relevant papers were not furnished to the members of the Panchayat well before conducting the meeting. On the other hand, it is seen that the charges made against the appellant/writ petitioner were read out only at the meeting one by one and after each charge was read out, the reply given by the Panchayat President was also read out and thereafter, the proposal of dismissal also was informed to the members. Therefore, it is clear that the procedure followed is directly against the decision of the Division Bench as stated supra.

6. No doubt, it is contended by the learned Additional Government Pleader that in pursuant to the report of the Tahsildar, the impugned order of the District Collector came to be passed on 14.02.2013 in detail and therefore, such order need

not be interfered with. We are not inclined to accept the said contention for the simple reason that when the very conduct of the preliminary enquiry was not in accordance with the procedure as laid down by this Court in the aforesaid decision and consequently the violation of principles of natural justice is apparent, the consequential order passed by the District Collector cannot withstand the scrutiny of this Court though not on merits but on the violation of principles of natural justice.

7. Further, it is to be noted in this case that in the meeting conducted by the Tahsildar, all the members have finally expressed their view against the proposed removal of the appellant/writ petitioner from the post of President. However, the District Collector, while passing the order of removal, has overruled such opinion/view expressed by all the members. Therefore, the order of the District Collector must satisfy the test of reasonableness and fairness and justify that such view expressed by the members was not correct. Therefore, such action of the District Collector in overruling the views of the members must necessarily precede with fair play by conducting meeting of the members with strict compliance of the principles of natural justice. The correctness or otherwise of the views expressed by the members can be gone into and decided by the District Collector in one way or other only when he has acted with all fairness by placing all the materials before the members well in advance before the date of conducting the meeting. If it is not done, such overruling of the views of the members by the District Collector has to be construed only as an arbitrary exercise of power apart from that being the outcome of the violation of the principles of natural justice. In this case, as already pointed out, the impugned order of removal came to be passed not by conducting the meeting by following the principles of natural justice as discussed supra. Therefore, we are of the view that the order of removal cannot be sustained and consequently the order of the learned Single Judge also cannot be sustained.

8. Thus, without going into the other merits and contentions of the rival parties and expressing any view on the same, we are inclined to set aside the order of the learned Single Judge and the order impugned in the writ petition only on the ground that the meeting conducted under Section 205 of the Tamil Nadu Panchayat's Act, 1994 was in violation of principles of natural justice in the light of the aforesaid decision of the Division Bench of this Court.

9. Consequently, the Writ Appeal is allowed and the order of the learned Single Judge dated 05.09.2013 passed in W.P.No.4547 of 2013 and the order of the District Collector dated 14.02.2013 are set aside. The matter is remitted back to

the District Collector for holding an enquiry under Section 205 of the Tamil Nadu Village Panchayat's Act, 1994 by following the procedures referred to in the aforesaid decision of the Division Bench and pass orders thereafter afresh on merits and in accordance with law. Such exercise shall be made by the District Collector within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rg
To

1. The Inspector of Panchayats
District Collector,
Cuddalore District.
2. The Revenue Tahsildar,
Chidambaram Taluk,
Cuddalore District.
3. Vice President,
Usoopur Village Panchayat,
Chidambaram Taluk,
Cuddalore District.

+1 cc to Mr.C.Prakasam Advocate sr.27137
+1 cc to Government Pleader sr.26835

WEB COPY W.A.No.2373 of 2013

lrs(co)
aa05/05/2016