

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
15.03.2016	17.03.2016

Coram

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

W.P.No.9167 of 2015, W.P.No.3743 of 2014 &
W.P.No.34909 of 2012

R.Sivasamy Petitioner in all W.Ps.,

Vs

1.The District Collector,
Coimbatore District.

2.The Assistant Director of Village Panchayat,
Office of District Collector,
Coimbatore District.

3.The Tahsildar,
Coimbatore South (Perur),
Coimbatore District.

... Respondents in W.P.No.9167/2015

1.The District Collector Cum
(Inspector of Panchayat under
Panchayat District),
Coimbatore District.
Coimbatore.

2.The Assistant Director of village Panchayat,
Office of District Collector,
Coimbatore District,
Coimbatore.

... Respondents in W.P.No.34909/2012 &
W.P.No.3743 of 2014

Prayer in W.P.No.9167 of 2015 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records pertaining to the notice dated 02.03.2015, issued by the third respondent vide proceeding

Na.Ka.No.8999/2014/A2, to convene a meeting on 12.03.2015 and consequential notice issued by the first respondent dated 13.03.2015, bearing Na.Ka.No.1772/2012/A3, and to quash the same.

Prayer in W.P.No.34909 of 2012 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the impugned notice of the first respondent in Na.Ka.No.1772/2012/A3, dated 24.08.2012 and quash the same.

Prayer in W.P.No.3743 of 2014 :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records on the file of the respondent in Na.Ka.No.1772/2012/A3, dated 27.11.2013 and quash the same.

For petitioner .. Mr.R.Murali

For Respondents .. Mr.P.H.Aravindh Pandian AAG

Assisted by

Mr.V.Jayaprakesh Narayanan Spl., G.P.,

C O M M O N O R D E R

All the three Writ Petitions have been filed by Mr.R.Sivasamy, the elected President of Thennamanallur Panchayat in Coimbatore District. In W.P.No.9167 of 2015, the petitioner has challenged the show cause notice issued by the District Collector, Coimbatore District/first respondent, dated 13.03.2015, calling upon the petitioner to submit his explanation as to why further action should not be taken to remove him from office, pursuant to the meeting of the Panchayat, which was convened by the Tahsildar, who has submitted the minutes of the meeting along with this letter dated 12.03.2015.

2. In W.P.No.34909 of 2012, the petitioner has challenged the proceedings of the District Collector, dated 24.08.2012, in and by which, the power granted to the petitioner to be a co-signatory of the Panchayat cheques had been withdrawn and vested with the Block Development Officer of Thondamuthur. The said Writ Petition was admitted and an order of interim stay was granted. While the said Writ Petition was pending, another order came to be passed by the District Collector, dated 27.11.2013, once again divesting the petitioner's cheque signing power as a co-signatory to the Panchayat cheques. The said Writ Petition in W.P.No.3743 of 2014, has been entertained, but there is no interim order.

3. The Writ Petition challenging the show cause notice in W.P.No.9167 of 2015 is taken up for consideration first.

4. I have heard Mr.R.Murali, learned counsel appearing for the petitioner and Mr.P.H.Aravindh Pandian learned Additional Advocate General assisted by Mr.V.Jayaprakash Narayanan, learned Special Government Pleader and perused the materials placed on records including the original files.

Contentions:-

5. The learned counsel appearing for the petitioner raised the following contentions challenging the impugned notice, namely,

(i) that the show cause notice dated 12.07.2012 was not issued in accordance with Section 205(1) of the Tamil Nadu Panchayats Act, 1994, (Act), as it is not based on a suo-moto action of the District Collector nor by 2/3rd majority of the members elected, but based upon a report submitted by the Assistant Director (Panchayats);

(ii) The report of the Assistant Director (Panchayat), which forms the basis of the show cause notice was not furnished to the petitioner;

(iii) In the impugned show cause notice dated 13.03.2015, there is reference to the report submitted by the Block Development Officer, dated 14.12.2012, copy of which has not been furnished to the petitioner, though the same has been extensively relied on by the first respondent in the show cause notice;

(iv) without prejudice to the above contention, it is submitted that the report of the Block Development Officer does not reveal any adverse entry against the petitioner and the report does not state that the petitioner has wilfully omitted to carry out his duties as the President of the Panchayat;

(v) out of the eight charges, which were framed in the show cause notice, dated 12.07.2012, four charges are held to be not proved and four charges are held to be proved as mentioned in the impugned show cause notice, dated 13.03.2015, based on the report of the Block Development Officer, but in such report, there is no adverse observation made against the petitioner;

(vi) The learned counsel for the petitioner elaborately referred to the impugned show cause notice, invited the

attention of this Court to each of the four charges namely, the charge Nos.1,2,3 and 8, the explanation offered by the petitioner and the remarks given by the Block Development Officer and submitted that none of the charges allege any misappropriation of funds, nor there is any allegation of any wilful commission or omission on the part of the petitioner. Therefore, it is contended that the impugned show cause notice deserves to be set aside. In support of his contention, the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of Tarlochan Dev Sharma vs. State of Punjab & Ors., reported in (2001) 6 SCC 260; Raviyashwant Bhoir vs. District Collector, Raigad & Ors., reported in (2012) 4 SCC 407; and the decision of this Court in the cases of V.Kanagavalli Viswanathan vs. The Chief Secretary to Govt., & Ors., reported in CDJ 2010 MHC 5558; V.Kasthuri & Anr., vs. The District Collector/Inspector of Panchayats Villupuram & Ors., reported in CDJ 2015 MHC 3325; Shanthi vs. The Government of Tamil Nadu & Ors., in W.P.Nos.17794 & 25682 of 2013, dated 14.08.2015 and M.Krishnamoorthy vs. State of Tamil Nadu & Ors., in W.P.No.20046 of 2015, dated 09.03.2016.

6. The learned Additional Advocate General submitted that all the points canvassed by the petitioner were raised in an earlier Writ Petition filed by the petitioner in W.P.No.3653 of 2014 and after considering the decision of the Hon'ble Supreme Court, relied on by the petitioner in the case of Raviyashwant Bhoir vs. District Collector, Raigad & Ors., (supra), and the decisions of this Court in the case of P.Packiyam vs. The Inspector of Panchayat/The District Collector reported in [2013 (1) CWC 797], and after perusing the original files, the Writ Petition was dismissed by order dated 02.12.2014. As against the said order, the petitioner preferred appeal in W.A.No.1718 of 2014, which was disposed of while confirming the order in the Writ Petition with the direction to the Tahsildar that while issuing notice for convening a requisite meeting of the Panchayat, 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. Further, it is submitted that the Special Leave Petition filed against the said order was withdrawn. Therefore, it is submitted that based on the direction issued in the Writ Petition in order dated 02.12.2014, the impugned show cause notice has been issued and the petitioner cannot once over again raise the very same contentions and call upon the Court to re-examine the entire matter, which was considered by the Court in the earlier round of litigation and after finding that the District Collector has passed orders by recording his reasons, the Writ Petition was dismissed. Therefore, it is submitted that the impugned proceedings are perfectly valid and the decisions relied on by the petitioner are factually distinguishable.

Discussions:-

7. The first Writ petition filed by the petitioner was W.P.No.20425 of 2012, wherein the petitioner challenged the show cause notice, dated 12.07.2012, issued under Section 205(1) of the Act. The Court rejected the prayer to interfere with the show cause notice holding that the same is pre-mature and directed the petitioner to participate in the proceedings by submitting a reply, with a further direction to the District Collector to proceed with the matter in accordance with law. This order dated 03.08.2012, had become final. Thereafter, the petitioner submitted his explanation and participated in the proceedings. The second Writ Petition namely, W.P.No.3653 of 2014, was filed by the petitioner, when the District Collector directed the Tahsildar to convene the meeting of the Panchayat to consider the proposal to remove the petitioner from the elected office.

8. The order impugned in the said Writ Petition was the notice issued by the Tahsildar, dated 27.01.2014. The affidavit filed in support of the Writ Petition has been enclosed in the typed set of papers, from which it is seen that the petitioner has not only challenged the notice raising factual issues, but also contended that the entire proceedings are vitiated for non-adherence to the procedure prescribed under Section 205 of the Act. The District Collector filed a counter affidavit and the Court considered the matter and by order dated 02.12.2014, dismissed the Writ Petition. While doing so, the decision in the case of Raviyashwant Bhoir vs. District Collector, Raigad & Ors., (supra), was distinguished as well as in the decision in the case of P.Packiyam vs. The Inspector of Panchayat/The District Collector, (supra). At this stage, it would be beneficial to refer to the relevant portion of the said order which is as follows:-

8. It is true that after the 74th Amendment to the Constitution, the local Self-Governments are given an autonomy and the same is expected to be unshackled from official control, as laid down by the Supreme Court in Ravi Yashwant Bhoir. Therefore, greater care and scrutiny may be necessary when an action is initiated in terms of Section 205.

9. The main contention of the petitioner is that after the submission of the explanation to the charges, the District Collector should form an opinion as to whether the explanation is satisfactory or not. In P.Packiyam, K.K.Sasidharan,J, held that the power under Section 205(2) to summon the Village Panchayat for ascertaining the views of its members can be

exercised only on forming an opinion on the existence of circumstances suggesting unsatisfactory nature of explanation. But, the learned Judge pointed out in paragraph 28 that it is not necessary to record detailed reasons. Paragraph 28 of the order of the learned Judge reads as follows:

"The Law is, therefore, clear that the power under sub-section (2) of Section 205 to summon the Village Panchayat for ascertaining the views of the members can be exercised only on forming an opinion on the existence of circumstances suggesting unsatisfactory nature of explanation. However, it is not necessary to record detailed reasons. The brief reasons in support of the order rejecting the explanation to the notice issued under sub-section (1) of Section 205 must be reflected either in the order directing the Tahsildar to convene the meeting or in the relevant file in the shape of notings or endorsements."

10. In the light of the above decision, I summoned the file from the office of the Collector. In the note file, it is found that the charges as well as the explanation are typed in detail. In the last paragraph of the note file, the brief reasons as to why the charges could be held proved are recorded. Therefore, the District Collector has recorded that the explanation is not satisfactory. Therefore, this is not a case which will fall within the mischief pointed out in P.Packiyam.

11. Therefore, I find that there are no merits in the writ petition. Hence, it is dismissed. However, the Tahsildar may issue a fresh notice convening a meeting of the Panchayat, keeping in mind the duration of time required for convening the meeting as per the provisions of Section 205. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are also dismissed.

9. The petitioner preferred an appeal before the Hon'ble Division Bench in W.A.No.1718 of 2014 and the Hon'ble Division Bench did not interfere with the order of dismissal of the Writ Petition, but made a slight modification to the order to ensure that all materials are supplied to all the participants in the meeting including the President.

10. It has to be noted that while dismissing the Writ Petition by order dated 02.12.2014, in paragraph 11 of the order, the Court observed that the Tahsildar may issue a fresh notice for convening a meeting of the Panchayat, keeping in mind, the duration of time required for convening the meeting as per the provisions of Section 205 of the Act. It is thereafter notice has been issued by the Tahsildar, which is now being challenged by the petitioner as well as the show cause notice issued by the District Collector.

11. Admittedly, the present proceedings is only a show cause notice and the petitioner's challenge to the first show cause notice dated 12.07.2012, in W.P.No.2425 of 2012, failed and the petitioner was directed to participate in the proceedings. The said order has become final. The second Writ Petition where the petitioner once over again raised similar contentions, some of which have once again been raised in this Writ Petition, were rejected and the Writ Petition was dismissed and Tahsildar was given liberty to issue fresh notice. This direction has been complied with. The Hon'ble Division Bench did not interfere with the direction issued by the Writ Court, but while affirming the decision, issued direction that the Tahsildar should ensure that all participants including the elected President/petitioner are supplied with the relevant material on which there is a proposed discussion and a decision is to be taken thereof. This is precisely what has been done by the impugned proceedings. Therefore, the impugned proceedings being a show cause notice, this Court is not inclined to interfere with the same and the decisions in the cases of V.Kasthuri (supra), V.Kanagavalli Viswanathani, (supra), M.Krishnamoorthy (supra) and Shanthi vs. The Government of Tamil Nadu & Ors., (supra) are distinguishable on facts and the impugned proceedings being a show cause notice, the petitioner has to necessarily participate in the proceedings. The petitioner contended that in the impugned show cause notice the District Collector has referred to the Block Development Officer for each of the four charges, and copy of such report has not been furnished. A supplementary argument was putforth that even as per the report of the Block Development Officer, portions of which have been extracted in the impugned order, there is no adverse observations against the petitioner. However, on these grounds the impugned show cause notice cannot be quashed, but the respondent can be directed to furnish the report of the Block Development Officer in full as only certain portions have been extracted in the impugned order, after which the petitioner has to participate in the proceedings. Accordingly, the Writ Petition is dismissed with a direction to the District Collector to furnish the copy of the report of the Block Development Officer 14.12.2012, within a period of one week from the date of receipt of this order with direction to the petitioner to submit his reply within a period

of four weeks thereafter to enable the first respondent/District Collector to proceed in accordance with law.

12. In W.P.No.34909 of 2012 and W.P.No.3743 of 2014, the challenge are to two orders passed by the Deputy Collector, dated 24.08.2012 and 27.11.2013 respectively, by which the cheque signing power of the petitioner has been divested and handed over to the Block Development Officer. The impugned orders have been challenged primarily on the ground that the order has been passed without notice to the petitioner. This contention raised by the petitioner has not been controverted in the counter affidavit filed by the respondents, but the respondents have stated about the various allegations which have lead to the order being passed. In the counter affidavit filed in 34909 of 2012, it has been stated that the petitioner committed various irregularities, violated the provisions of the Act and Rules and performed various works without sanction of the Panchayat Council, illegally granted permission for developing lay outs, illegally collected developmental charges, several works were carried out utilising the general funds of the Panchayat without prior sanctioned etc. In the counter affidavit filed in W.P.No.3743 of 2014, the first respondent has stated that the complaint was received on 29.10.2013 against the petitioner for spending public money without getting prior permission from the Panchayat council, refusing to sign the Panchayat cheques, abused the Vice President, lack of co-operation between the petitioner and the Vice President and Ward Members resulting in agitation being conducted by the Ward Members inside the Panchayat office campus etc. Though in the counter affidavits, various averments have been made to justify the action, the impugned orders divesting the petitioner's cheque signing power should not have been passed without notice to the petitioner. Infact, the learned Additional Advocate General is not able to substantiate by producing any record to show that show cause notices were issued prior to passing of the orders dated 24.08.2012 and 27.11.2013.

13. Hence, on this technical ground, the petitioner is entitled to succeed in these Writ Petitions. Accordingly, W.P.Nos.34909 of 2012 and 3743 of 2014 are allowed and the impugned orders are set aside with liberty to the first respondent to issue show cause notice to the petitioner and proceed in accordance with law, if they so desire.

14. In the result,

(i) the Writ Petition in W.P.No.9167 of 2015 is dismissed with a direction to the District Collector to furnish the copy of the report of the Block Development Officer 14.12.2012, within a period of one week from the date of receipt of this order with direction to the petitioner to submit his reply

within a period of four weeks thereafter to enable the first respondent/District Collector to proceed in accordance with law.

(ii) W.P.Nos.34909 of 2012 and 3743 of 2014 are allowed and the impugned orders are set aside with liberty to the first respondent to issue show cause notice to the petitioner and proceed in accordance with law, if they so desire.

(iii) No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Coimbatore District.
- 2.The Assistant Director of Village Panchayat,
Office of District Collector,
Coimbatore District.
- 3.The Tahsildar,
Coimbatore South (Perur),
Coimbatore District.

+1cc to M/S.R.Murali, Advocate, S.R.No.17641
+1cc to M/s.M.Raja, Advocate, S.R.No.17642
+1cc to the Government Pleader, S.R.No.17871

W.P.No.9167 of 2015, W.P.No.3743 of 2014 &
W.P.No.34909 of 2012

ad(CO)
srg(28/03/2016)

WEB COPY