

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2016

Coram

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

Writ Petition No.33033 of 2013

A.Valarmathi

...Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Panchayat's,
Cum District Collector,
Villupuram District - 605 602.
3. Block Development Officer,
Kattu Nemili Village Panchayat,
Kattu Nemili,
Ulundurpettai Taluk, Villupuram District.

...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records from the second respondent, dated 11.11.2013, bearing Reference Na.Ka.No.A 372623/2012, Vo.E(Voo) removing the petitioner from the post of President of the Kattu Nemili Village Panchayat as published in the Tamil Nadu Government Gazettee Notification, dated 12.11.2013, by Heads of Departments Etc., vide reference No.VI(2)/244(A-1)/2013, and all related proceedings and to quash the same as the same being illegal, and contrary to the provisions of the Tamil Nadu Panchayats Act, 1994, and consequently, to direct the respondents 1 to 3 to restore and continue the petitioner as the President of the Kattu Nemili Village Panchayat by allowing her to discharge her duties.

For Petitioner : Mr.S.Saravana Kumar

For Respondents 1 & 2 : Mr.R.Lakshmi Narayanan
Additional Government Pleader

For Respondent - 3 : Mr.S.V.Duraisolaimalai

O R D E R

Heard Mr.S.Saravana Kumar, the learned counsel appearing for the petitioner; Mr.R.Lakshmi Narayanan, the learned Additional Government Pleader for first and second respondents; and Mr.S.V.Duraisolaimalai, the learned counsel appearing for the third respondent.

2. This Writ Petition has been filed, challenging the order passed by the second respondent/Commissioner of Panchayat's Cum District Collector, dated 11.11.2013, removing the petitioner from the post of President of Kattu Nemili Village Panchayat, and the consequential Gazette notification, dated 12.11.2013.

3. I have abbreviated the narration of the case, restricting it only to the relevant details.

i) The petitioner, by name A.Valarmathi, was elected as President of the aforesaid Village Panchayat, and a notification to the said effect was issued on 24.07.2010. The petitioner was elected to the said post for the second term. This, according to the petitioner, is on account of the good service rendered by her to the Panchayat, and the public was convinced about her capabilities. However, a show cause notice came to be issued against her, dated 28.08.2012, containing eight charges, and those charges relate to alleged misappropriation of the Panchayat's funds and other related matters. The petitioner was granted 15 days' time to submit her reply/explanation to the said show cause notice.

ii) It is not in dispute that the notice has been issued to the petitioner under Section 205 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act'). Simultaneously, the cheque signing power of the petitioner was divested from her, by order, dated 28.08.2012. The petitioner submitted her explanation to the show cause notice, pointing out that, the records have been properly maintained by her, and the records have been taken over by the Audit Department, and the Audit Department has prima facie found that there is proper maintenance of accounts, and there is no misappropriation. The petitioner also produced the details of challans, which were in her possession, and prayed that action should be dropped. Along with the explanation, the petitioner enclosed i) Registers, ii) Expenditure bills for the period from April 2012 to June, 2012, when the audit was conducted, iii) Receipt books, and iv) Bank passbook. Pursuant thereto, the petitioner was not aware of the order passed by the District Collector on the petitioner's explanation.

iii) Thereafter, the petitioner received a notice from the third respondent/Block Development Officer, dated 01.07.2013, stating that the meeting of the Panchayat is to be convened by the

Revenue Tahsilar, Ulundurpet, on 03.07.2013, at 3.00 p.m, and the petitioner, Vice President and other Ward Members of the Panchayat were directed to participate in the meeting, without fail. The Minutes of the resolution/decision taken in the meeting have been filed, from which, it is seen that none of the members were able to express any clear cut finding as to whether any misappropriation or serious irregularities have been committed by the petitioner. The said Minutes of the Meeting was forwarded to the District Collector, who has passed the impugned order, holding that the charges levelled against the petitioners have been proved, and therefore, the petitioner has to be removed from the post of President. In the impugned order, it is stated that, after perusing the explanation given by the petitioner, the Inspector of Panchayat, came to the conclusion that the meeting of the Panchayat should be convened prior to the removal of the petitioner from the post of President of the Panchayat. Therefore, the meeting was directed to be convened by the Tahsildar.

iv) Therefore, it is to be seen, as to whether the notice, which was issued to the petitioner, is in accordance with the provisions of the Act, and whether the petitioner, Vice President and other ward members of the Panchayat were made known that the meeting to be convened was for the purpose of removing the petitioner from the post of President. If the petitioner is able to establish that this was not done, then, the impugned order has to be held to be vitiated. Further, it is seen that the Tahsildar has not issued the notice as regards the meeting, but, it is the Block Development Officer, who has issued the notice, dated 01.07.2013. Thus, the correctness of the impugned order has to be tested, and, it has to be seen, whether the provisions contemplated under the Act have been fulfilled.

4. In this connection, I am reminiscent of the judgment rendered by me in re (V.Kasthuri and another Vs. The District Collector and two others) in W.P.Nos.2450 and 2451 of 2015, dated 26.03.2015, wherein, I have pointed out, what are all the procedures to be followed before convening the meeting of the Panchayat, and it would be apposite to quote certain excerpts from para No.5 of the said order, as it would succour this Court for the effective disposal of the Writ Petition, and the excerpts from the said order would run thus:-

"In terms of the procedure contemplated under Section 205 of the Act, the District Collector and the Inspector of Police has to consider the explanation and take a decision as to whether the explanation is acceptable and if not, whether the matter requires exercise of power under Section 205 of the Act. After recording reasons in writing and communication the same to the aggrieved persons, the District

Collector has to direct the Tahsildar to convene a meeting of the Panchayat."

5. From the counter affidavit filed in connection with this Writ Petition, it is not clear, as to what formed the basis for convening the meeting on 03.07.2013, and what are the reasons, which made the Inspector of Panchayats to convene the meeting.

6. In the very same judgment, referred supra, I have stated what are all the procedures to be followed by the Tahsildar before convening the meeting in terms of Section 205 (8) of the Act, and the same is extracted hereunder:-

- i) Read to the Village Panchayat, notice of the Inspector;
- ii) The explanation submitted by the President; and
- iii) The proposal for the removal with the President.

7. Therefore, in the case on hand, it has to be seen whether the Tahsildar has complied with the aforesaid three requirements, before convening the meeting. Firstly, it is to be pointed out that the notice as regards the convening of the meeting was not issued by the Tahsildar, but, it was issued by the Block Development Officer (B.D.O.) hence, the same is defective. That apart, even assuming that B.D.O. has been authorized to issue such notice, it is not specifically stated in the notice, dated 01.07.2013, that the meeting is to be convened for the purpose of considering the issue regarding the removal of the petitioner from the elected Office of the Panchayat. Power under Section 205 of the Act should be exercised by the Inspector of Panchayat, if he is satisfied that the President of the Panchayat wilfully omitted or refused to carry out or disobeyed any provisions of the Act or any Rule or By-law, Regulation or lawful order made or issued under the Act, or abused any power vested with him. The allegations, which according to the second respondent/District Collector, have been proved, are not established to be wilfull act or omissions or commissions. In fact, the District Collector has not taken into consideration the specific stand taken by the petitioner that the records of the Panchayat from April, 2012 have been taken over by the Audit Department. The petitioner has produced the copy of the Audit Report, dated 27.07.2012, which falls during the period in question, from which, it is seen that the Audit Department has recorded a finding that there is no misappropriation and the records have been properly maintained by the petitioner. The effect of the Audit Report has also not been taken into consideration by the second respondent while passing the impugned order. That apart, though in the impugned proceedings, certain recordings have been made as regards the procedures adopted, the same is not borne out in the Minutes of the Meeting directed to be convened by the District Collector on 15.07.2013. Therefore, in the Minutes, it should have been specifically recorded that the Tahsildar has complied with the three requirements, as mentioned

in the preceding para, viz., in para No.5, and in the absence of such recordings, mere mentioning in the counter affidavit or in the impugned order that procedures contemplated under the provisions of the Act have been followed will not cure the defect.

8. In the light of the above discussion, this Court is of the firm view that the impugned order has been passed in utter disregard to the statutory provisions, as mentioned above. For the aforesaid reasons, the impugned order stands quashed.

9. In the result, the Writ Petition is allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Secretary
Government of Tamil Nadu,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The Commissioner of Panchayats,
Cum District Collector,
Villupuram District - 605 602.
3. Block Development Officer,
Kattu Nemili Village Panchayat,
Kattu Nemili,
Ulundurpettai Taluk, Villupuram District.

1 cc to Mr. Saravanakumar, Advocate, sr. 10158

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