



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.1908 of 2014

and

W.M.P (MD) Nos.1 to 3 of 2014

R.Kannan

: Petitioner

Vs.

1.The District Collector,
Dindigul District.

2.The President,
Seelapadi Village Panchayat,
Dindigul District.

3.Nagaraj,
Secretary (Incharge),
Seelapadi Panchayat,
Dindigul District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned Order made in Na.Ka.No.4253/2012/00.Va.4 (1) dated 30.05.2012 by the first respondent and quash the same as it is arbitrary and illegal and in consequence to direct the respondents 1 and 2 to approve the petitioner's appointment for the post of Secretary in Seelapadi Village Panchayat and reinstate him and regularize his service on and from 26.05.2012 with all attendant benefits.

For Petitioner : Mr.R.Maheswaran

For Respondent 1 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader.

For Respondent 2 : Mr.R.Velmurugan.

For Respondent No.3 : No appearance

O R D E R

The impugned order dated 30.05.2012 passed by the first respondent, the District Collector, Dindigul District, in the

removing the petitioner from the post of Panchayat Secretary is under challenge in this writ petition.



2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Plader appearing for the respondents 1 and 2.

3. The brief facts leading to the filing of this writ petition are as follows:

The petitioner was appointed as a Panchayat Secretary in the second respondent Panchayat, on 25.05.2012 through the Resolution dated 12.05.2012 and the appointment was duly approved by the Resolution No.38, dated 25.05.2012. After appointment, the petitioner requested the second respondent to regularize his service and also to disburse his salary. At this juncture, the second respondent received a communication from the first respondent, dated 25.01.2014, stating that the third respondent is transferred to the office of the second respondent. At that time, he came to know that the first respondent cancelled the resolution dated 12.05.2012, by the act of which, his appointment was also cancelled. The said order was passed without affording an opportunity of hearing to the petitioner as per Section 202(2) of the Tamil Nadu Panchayats Act, 1994. Therefore, this writ petition has been filed.

4. The learned counsel for the petitioner relying upon Section 202(2) of the Tamil Nadu Panchayats Act, 1994 would contend that no notice was issued before passing the order of cancellation and therefore the impugned order is liable to be set aside. Section 202(2) of the Tamil Nadu Panchayats Act, 1994 reads as follows:

"202. Power to suspend or cancel resolution, etc. under the Act.- (1) The Inspector may, by order in writing-

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in his opinion,-

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or property, or is likely to lead to a riot or an affray:

Provided that nothing in this sub-section



shall enable the Inspector to set aside any election which has been held.

(2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation.

(3) The power conferred on the Inspector under clause (c) of sub-section (1) may be exercised by the collector in accordance with the provisions of that clause".

5. The learned counsel for the petitioner also relies upon the decisions of this Court in U.Deivasigamani v. Tmt.Ranjitham and Others reported in (2006) 4 MLJ 1097 and in Kodanthur Village Panchayat, through its Vice President, Aravakurichi Taluk, Karur District and Others v. M/s.supreme Poultry Private Limited, rep. by its Chairman cum Managing Director, P & C Towers, No.140, Perundhurai Road, Erode - 638 011 and Others reported in 2012-1-L.W.505, wherein it has been held that the Inspector of Panchayat is empowered either to suspend or cancel any resolution passed in terms of Clause (i) of sub-section (1) of Section 202 and that power must be exercised in conformity with sub-section (2) of Section 202, as by that section the Inspector of Panchayat, before either suspending or cancelling any resolution, should give an opportunity to the authority or person concerned and call for explanation. Paragraph No.7 of U.Deivasigamani's case is extracted here-under, for convenient reference:

"7. Next question that falls for our consideration is as to the power of the Inspector of Panchayat either to suspend or cancel the resolution of the panchayat in exercise of power under Section 202 of the Act. There cannot be any dispute that the Inspector of Panchayat is empowered either to suspend or cancel any resolution passed in terms of clause (i) of sub section (1) of Section 202. That power must be exercised in conformity with sub-section (2) of Section 202, as by that section the Inspector of Panchayat, before either suspending or cancelling any resolution, should give an opportunity to the authority or person concerned and call for explanation. The power under the said Section cannot be exercised arbitrarily as it has two limbs, firstly, an opportunity to the local authority or person concerned who would be likely to be affected by the order of the Inspector of Panchayat and secondly, the explanation, if any, submitted should be considered by applying his mind independently before any decision is taken. The satisfaction of the Inspector of Panchayat must be in accordance with the provisions of the Act. In fact, the power under Section 202 should be exercised by the Inspector of Panchayat in a judicial manner, as such power is in

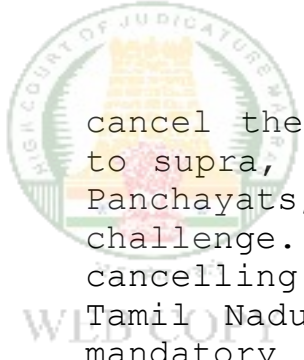


the nature of exercising a quasi judicial function. It is the specific case of the President that before the order impugned in the writ petitions was passed by the Inspector of Panchayat, no opportunity was given as contemplated under sub-section (2) of Section 202. This position is not disputed by the Inspector of Panchayat. For the same reason, the order or the Inspector of Panchayat is unsustainable for non-compliance of the provision of sub-section (2) of Section 202. That apart, a perusal of the impugned order does not indicate as to the application of mind by the Inspector of Panchayat to the facts of the case. The relevant paragraph of the order of the Inspector of Panchayat needs a reference and the same reads as under:-

"The notice of intimation issued by the President, Kaundachipuram Panchayat under reference second cited has been considered. As per Section 38(j) of the Tamil Nadu Panchayat Act, 1994 if a member absents himself from the ordinary meetings of the panchayat for three consecutive months even after due intimation of the meetings, then explanation has to be called for and a decision taken on the explanation in the next ordinary meeting after discussion. However, as the notice of disqualification of the Vice-President and Member, Ward No.4, Kaundachipuram Panchayat was sent without following due procedure the same is hereby ordered to be cancelled".

6.The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that one Mr.Baladandayuthapani, who was working as Panchayat Secretary at Seelapadi Panchayat, got arrested by the Vigilance and Anti Corruption Wing, on 20.01.2011 and thereafter he was placed under suspension and the said post was not declared as vacant post. The said Baladandayuthapani filed a writ petition seeking to revoke his suspension. The Panchayat illegally passed a resolution dated 12.05.2012 and thereafter, appointed the petitioner as Panchayat Secretary. The District Collector is empowered under Section 202 of the Panchayat Act, 1994, to cancel the resolution. Therefore, the same cannot be challenged as illegal. He would further submit that the post of Panchayat Secretary has to be filled up by following the Rules prescribed under the Act and as the Rules and Regulations have been followed in this case, the cancellation of appointment made by the District Collector is valid.

7.The contention raised by the learned Additional Government Pleader appearing for the respondents 1 and 2 is that the District Collector as Inspector of Panchayats, has got the authority to



cancel the resolution. As pointed out in the decisions referred to supra, the authority of the District Collector as Inspector of Panchayats, to cancel any resolution itself, is not under challenge. It is under challenge only on the ground that while cancelling the resolution, provisions of Section 202(2) of the Tamil Nadu Panchayat Act, 1994, has not been followed. It is mandatory to provide an opportunity of hearing and to call for explanation and to consider the explanation and thereafter to pass orders as contemplated under Section 202(2). A perusal of the order dated 30.05.2012 did not indicate that the provisions of Section 202(2) has been followed. Under such circumstances, the impugned order dated 30.05.2012, passed by the first respondent, is set aside and the matter is remitted back to the first respondent, District Collector, Dindigul District, with a direction to take a decision after following the provisions of Section 202(2) of the Tamil Nadu Panchayats Act, 1994.

8.The writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To

1.The District Collector,
Dindigul District.

2.The President,
Seelapadi Village Panchayat,
Dindigul District.

+1CC to M/S.R.Velmurugan, Advocate, SR.No. 70453
+1CC to M/S.R.Maheswaran, Advocate, SR.No. 70241
+1CC to the Special Government Pleader, SR.No. 70617

ORDER MADE IN
W.P (MD) No.1908 of 2014
and

W.M.P (MD) Nos.1 to 3 of 2014
17.11.2016

smn

AM/SK SKN/SAR-3/30.11.2016/5P/6C