

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 31.07.2017

CORAM

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN**W.P. (MD)No.18561 of 2016 and
W.M.P (MD)Nos.13441 to 13443 of 2016**

S.Ponnuswamy

... Petitioner

Vs.

1. The State Election Commission,
No.100 Feet Road,
Vadapalani, Chennai.
2. The District Collector/Inspector of Panchayat/
The District Electoral Officer,
Tirunelveli District,
Tirunelveli.
3. The Block Development Officer/
Commissioner/Returning Officer of the
Local Body Election 2016,
Alangulam Panchayat Union,
Tirunelveli District.
4. The Tahsildar,
V.K.Pudur,
Tirunelveli District.

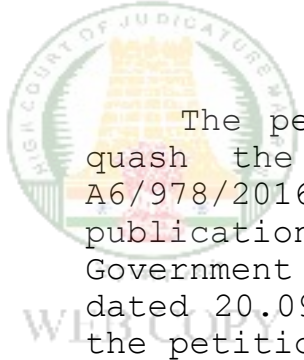
...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the second respondent in A6/978/2016 dated 19.09.2016 and the consequential impugned publication made by the second respondent in the Tamil Nadu Government Gazette Extraordinary, No.224 in Part VI - Section 2 dated 20.09.2016, quash the same and consequently direct the respondents herein to permit the petitioner to participate in the local body election to the post of Village President in Keela Veeranam Village Panchayat.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel
for M/s. Veera Associates

For Respondents : Mr.S.Kumar,
Additional Government Pleader

ORDER



The petitioner seeks for a Writ of Certiorari to quash the impugned order passed by the second respondent in A6/978/2016 dated 19.09.2016 and the consequential impugned publication made by the second respondent in the Tamil Nadu Government Gazette Extraordinary, No.224 in Part VI - Section 2 dated 20.09.2016 and consequently, direct the respondents to permit the petitioner to participate in the local body election to the post of Village President in Keela Veeranam Village Panchayat.

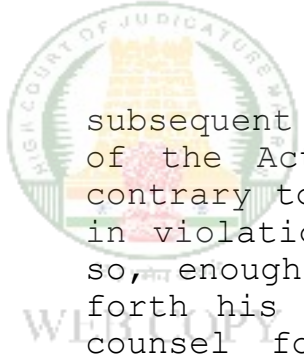
2. The case of the petitioner, in nutshell, is as follows:

2.1. The petitioner was elected as President for the Keela Veeranam Village Panchayat for the period 2011-16. On 22.02.2013, a resolution was passed and the Panchayat Assistant, namely Syed Ali, was removed, because numerous complaints were received against him and the said vacancy was notified and after placing the same before the Council of Village Panchayat, one K.Mahuthangani, was appointed to the said post. Thereafter, the said post was re-designated as Secretary to the Village Panchayat.

2.2. While so, the respondents 2 and 3, by proceedings dated 21.05.2013 and 10.04.2013, called for an explanation from the Village Panchayat, regarding the meetings conducted on 31.12.2012 and 20.03.2013, as they were not properly conducted. Though, sufficient replies were given to the said notices, the second respondent set aside the resolutions passed by the Panchayat on 22.02.2013, 13.03.2013 and 20.03.2013, stating that notice of meeting was not served to the members. Thereafter, on 20.03.2013, the resolution was ratified by placing it before the council and the said Mahuthangani has become a regular employee/Secretary of the said Panchayat. Subsequent thereto, WP(MD)No.4006 of 2014 came to be filed against the order of the third respondent dated 07.01.2014, vide which, recovery of money was demanded, which was paid as salary to Mahuthangani. Another writ petition W.P(MD)No.8015 of 2014 came to be filed against the ratification of the subsequent resolution, as the same cannot be validated. These two writ petitions are said to be pending.

2.3. While things stood thus, the second respondent by proceedings in A6/978/2016 dated 06.04.2016, invoking Section 205(1) of the Tamil Nadu Panchayat Act, 1994, directed the fourth respondent to convene a meeting, seeking explanation and to record the views of the village panchayat. Though the members of the Council stood behind the petitioner, the second respondent without giving any opportunity to the petitioner, removed him from the post of President on 19.09.2016, and published the same in the Government Gazette on 20.09.2016, without communicating the same to him. Aggrieved by which, the petitioner is before this Court, praying for quashing the impugned order.

3. The learned senior counsel appearing for the petitioner submitted that for removing the petitioner from the post of President, opinions were called for from the Council members and



subsequent thereto, the District Collector, by invoking Section 205 of the Act, passed the present impugned order, which was quite contrary to the decision taken by the Council members. The same is in violation of principles of natural justice, because while doing so, enough opportunity should be given to the petitioner, to put forth his case. In support of his contention, the learned senior counsel for the petitioner placed reliance on the Full Bench Judgment in the case of District Collector, Villupuram and others vs. Devi Parasuraman, dated 19.08.2009, reported in 2009 (7) MLJ 417 FB.

4. The learned Additional Government Pleader appearing for the respondents, on the other hand, fairly submitted that no opportunity has been granted to the petitioner, before taking a different stand than that of the stand taken by the council members.

5. Heard the learned senior counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. The Full Bench of this Court, in the case in District Collector and others vs. Devi Parasuraman, in W.A.Nos.1257 and 1258 of 2008, dated 19.08.2009, has held as follows:

..."15. An order passed by a statutory authority if visited with civil or evil consequences must meet the test of reasonableness. If it prejudicially affects the subject, for example, the President in the present case, then the authority should give reasons. In the case of Consumer Action Group v. State of T.N. (supra) the Supreme Court held that application of mind of an authority at a particular point of time could only be revealed when the order records its reasons. Therefore, under Section 205, if the Inspector being satisfied with the explanation drops the proceeding, he should record it in the proceeding. In case of unsatisfactory explanation or non-explanation, the Inspector cannot take a decision of his own, but required to forward the matter to the Tahsildar for the decision of the Village Panchayat. It is the Village Panchayat, which records reasons in its minutes of the meeting. Normally, the Inspector has to act on such decision. In such case, reason being on record, for acceptance of such report no further reason required to be recorded by the Inspector. However, in case the Inspector differs with the decision of the Village Panchayat, to test the reasonableness of such decision, the Inspector is not only supposed to record the reason, but also required to follow the rules of natural justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion"...

7. The above case squarely applies to the present case on hand. As rightly pointed out by the learned senior counsel for the petitioner, before taking a decision, which was different from the decision taken by the Council members, no opportunity was given by the District Collector / second respondent to the petitioner. On that score alone, the impugned order is liable to be set aside.



8. In result, the writ petition is allowed and the impugned order dated 19.09.2016, passed by the second respondent in A6/978/2016 is set aside and the matter is remitted back to the second respondent. The second respondent is directed to pass appropriate orders, in this subject matter, after affording due opportunity of hearing to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1. The State Election Commission,
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4. The Tahsildar,
V.K.Pudur, Tirunelveli District.

+1 cc to M/S.Veera Associates , Advocate in SR.No. 68863
+1 cc to The Special Government Pleader in SR.No.69754

gk/smn

AE/MR KKR/SAR3/10.08.2017/4P/7C

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