

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.13971 of 2008

and

M.P.No.1 of 2008

N.Gopal

... Petitioner

Vs.

1. The Collector,
Coimbatore District.
2. The Assistant Director of Panchayat,
Coimbatore.
3. The Block Development Officer
(Panchayat), Thondamuthur,
Coimbatore.
4. The Tahsildar,
Coimbatore (South)
Coimbatore District.
5. Dharmaraj
6. Nagamanickam
7. Chitra
8. Nagaraj
9. Selvakumar
10. Muthusamy
11. L.Ravi

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order of the 1st respondent in his Na.Ka.No.461/2007/A3 dated 21.03.2008 and to quash the same.

For Petitioner : Mr.R.Gandhi
Senior Counsel
For Mr.R.G.Narendhiran

For R1, R2 & R4 : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

For R3 : Mr.K.Balasubramanian

For R5 to R11 : Mr.K.Govi Ganesan

O R D E R

This Writ Petition has been filed to call for the records relating to the order of the 1st respondent in his Na.Ka.No.461/2007/A3 dated 21.03.2008 and to quash the same.

2. The case of the petitioner as contended in his affidavit that in the year 1996, he was elected as President of the Perur Chettipalayam Panchayat, for the period from 1996 to 2001. After he had assumed the office of the President in the Panchayat, he had implemented several welfare schemes and had revamped the entire machinery of the Panchayat Administration by executing various schemes to the village public. The petitioner was the one to implement "Anna Marumalarchi Thittam" scheme in the academic year 1999-2000 and undertook several development schemes to the tune of Rs.1,50,00,000/-.

3. The petitioner would further contend that in the year 2006, he was again elected as President in the Thondamuthur Block, and subsequently, when he had taken charge as President, he had found many discrepancies that had crept-in, in the previous term 2001-2006, including the funds, which have been mishandled by the then President and other members of the earlier term. Hence, he had given a detailed representation dated 16.02.2007 to the respondents 1 and 2, by passing a resolution in the Grama Sabha. Since there was no action taken by the respondents, the petitioner gave a representation dated 11.09.2007 to the Government, to conduct a Local Fund Audit for the previous term 2001-2006. Consequently, the Local Fund Audit was conducted and a final report was made to the 1st respondent on 03.01.2008.

4. The petitioner would also contend that after he assumed office as President, he had taken several measures to implement all the welfare schemes to the village public and had also spent the funds within his powers, however, some of the ward members, who had developed enmity towards the petitioner, refused to sign any resolution passed by the petitioner, and thereby, prevented the petitioner to carry out his duties as President of the Perur Chettipalayam Village. The petitioner had sent several representations dated 16.12.2006, 23.01.2007, 05.06.2007, 17.08.2007, 08.09.2007, 05.10.2007 and 25.04.2008 to the 1st respondent, informing the action of the ward members non-co-operation to pass any resolution by the petitioner, but, no action was taken by the 1st respondent.

5. Furthermore, the petitioner would contend that he was issued with a charge sheet in Na.Ka.No.461/2007/93 dated 00.08.2007 for the expenditure he had incurred in the absence of passing of resolution in the council meeting for the year 2007

and to render explanation within seven days of time. The petitioner had also offered his explanation in detail dated 03.10.2007, however, the 1st respondent, without passing any order for the said explanation and conducting any enquiry, had chosen to come forward with the recovery proceedings dated 21.03.2008 with an ulterior motive to harass the petitioner. Moreover, the 4th respondent had issued a notice dated 02.02.2008 to hold the General Body Meeting to decide to remove the petitioner from his Presidentship. Subsequently, the petitioner was on medical leave for a period of about five months. While so, he was issued an order dated 18.07.2007 by the 1st respondent, based on his representation dated 20.02.2008 to take charge as President after his period of absence.

6. The petitioner would also contend that on taking charge as President after expiry of his medical leave, he was totally shocked to receive the proceedings in Na.Ka.No.461/A3 dated 21.03.2008 ordering recovery to the tune of Rs.6,80,403/-, which had been spent by the petitioner for the welfare of the public. Even though, the petitioner had well informed the 3rd respondent, who was incharge of the office of the President on his absence on medical leave, to ratify the expenditure incurred by the Panchayat to carry out various works in the Village Panchayat, the 3rd respondent had failed to do so, and had also initiated action against the petitioner by way of proceedings to recover the money to the tune of Rs.6,80,403/- that had been spent on non-ratification of the expenditure by the ward members subsequently. Therefore, the petitioner would contend that he cannot be arbitrarily held responsible for the non-ratification that had not been made by the 3rd respondent for the expenditure incurred by the petitioner herein and the action taken by the respondents against the petitioner is totally arbitrary and in violation of principles of natural justice.

7. Denying all the allegations of the petitioner, the 3rd respondent filed a counter, wherein, it has been contended that it is the legitimate duty of the Village Panchayat President to serve the public by implementing various development schemes announced by the Government. The "Anna Marumalarchi Thittam" was introduced by the then State Government and it is not the petitioner's own scheme. Further, the implementation of the schemes announced by the Government, is part and parcel of the Village Panchayat President's duty and there is nothing new or innovative ideas of the petitioner. This scheme was implemented in several Village Panchayats and the petitioner was not the one and only Village Panchayats President to implement this scheme.

8. The 3rd respondent would also contend that during the first term as President of Perurchettipalayam Village Panchayat from 1996-2001, the petitioner was dismissed from Presidentship by the Collector/Inspector of Panchayats, Coimbatore and subsequently, the petitioner approached the Government and

obtained the interim injunction by this Court. So this is not the first time that the petitioner has been served with charges under Section 205 of the Tamil Nadu Panchayats Act 1994. Further, the 3rd respondent would contend that the Local Fund Audit was conducted on the accounts of the Perurchettipalayam Village Panchayat from 2001-2006 and a report has been submitted to the Collector/Inspector of Panchayats, Coimbatore. As per the said report, it is clearly known that the Collector/Inspector of Panchayats, was not satisfied to take action under Section 204 (3) of the Tamil Nadu Panchayats Act, 1994. Moreover, the 3rd respondent would contend that the explanation given by the petitioner on 03.10.2007, also was not satisfactory to the 1st respondent and hence, recovery orders were passed against the petitioner to repay a sum of Rs.6,80,403/- within 10 days from the receipt of the order in Na.Ka.No.461/2007/A3 dated 21.03.2008.

9. The 3rd respondent would further contend that the petitioner clearly knows that the expenditure made by the Panchayat for any purpose, should be passed by a resolution of the Panchayat Council. But, the expenditure so incurred by the petitioner was not approved by the Panchayat Council till the date of issue of the recovery orders passed by the Collector/Inspector of Panchayats, Coimbatore. Moreover, the 3rd respondent would contend that the petitioners information to the Special Officer /Block Development Officer (VP), Thondamuthur to ratify the expenditure incurred by the petitioner without the approval of the Panchayat Council could not be acceptable, as the Special Officer/Block Development Officer (VP), is not empowered to ratify the same. This clearly indicates that petitioner's intention is to mislead the officers to violate Superior Officials Orders and Government Orders.

10. In addition, the 3rd respondent would contend that the Collector/Inspector of Panchayats, Coimbatore, had ordered the Block Development Officer (VP), Thondamuthur, to act only as the Special Officer of Perurchettipalayam Village Panchayat and not as President of the Panchayat. Further, the Collector/Inspector of Panchayats, Coimbatore, has not issued any orders to the Special Officer / Block Development Officer (VP), Thondamuthur, to send proposals to get ratification for the expenditure made by the President/Executive Authority, Perurchettipalayam Village Panchayat, without getting the sanction of the Village Panchayat Council. It is the sole duty of the President / Executive Authority of the Village Panchayat Council, to get the resolutions sanctioned by the Village Panchayat Council and not the Special Officer incharge of the Village Panchayat. Therefore, it is very clear that the motive of the petitioner is to mislead the officials to commit mistakes and to motivate the officials to violate the Superior Officer's orders and the orders of the Government. Hence, sought for dismissal of the

above Writ Petition.

11. The learned Senior Counsel Mr.R.Gandhi appearing for the petitioner would vehemently argue that without conducting any enquiry, no recovery can be made merely on the charges leveled against the petitioner, hence, the action initiated by the 1st respondent, is illegal. Further, the entire action initiated by the 1st respondent, is illegal in nature and no opportunity was given to the petitioner before such charges were leveled against the petitioner. Hence, it is violative of principles of natural justice.

12. The learned Senior Counsel for the petitioner would further contend that no notice has been served by the 1st respondent prior to the issuance of the recovery order, which makes the impugned order null and void, as it is issued in an arbitrary manner and without application of mind.

13. The learned Senior Counsel for the petitioner would also contend that the impugned action initiated by the 1st respondent, was during the period of absence of the petitioner, hence, he cannot be held responsible for the same. Moreover, learned Senior Counsel would contend that only after conducting the enquiry and after the charges have been proved, recovery proceedings can be issued, but, in the absence of any such enquiry, the impugned order came to be passed in a hurried manner and totally non application of mind.

14. The learned Senior Counsel for the petitioner would further contend that proper resolution has been passed for the expenditure incurred by the Panchayat for the welfare of the public and hence, the said expenditure was approved by the Panchayat Council. Therefore, the impugned order has to be set aside.

15. Heard both sides and perused the materials available on record.

16. When the matter was taken up for hearing on 26.06.2018, this Court has directed the learned Additional Government Pleader to produce the records pertaining to the said Village Panchayat activities. Accordingly, the learned Additional Government Pleader has produced the said records before this Court. On perusal of the records, it could be seen that special audit from the year 2001-2002, 2005-2006 was conducted from 05.10.2007, from which, it could be seen that there is a loss of a sum of Rs.35,01,789 during the audit at Thondamuthur Panchayat Union. Based on which, charges were framed against the petitioner. The petitioner also seems to have sent his reply to the said charges. However, by proceedings dated 20.12.2007, the 1st respondent has directed to initiate proceedings against the petitioner under Section 205(1) of the Tamil Nadu Panchayat Act, 1994. However, it could be seen that the petitioner, even prior

to the initiation of such action, has gone on medical leave by producing medical certificate from a general physician. After finding the said reply not satisfactory, the 1st respondent, based on audit information that the petitioner seems to have spent an amount of Rs.6,80,403/- for the period from 02.02.2007 to 28.03.2007. For the expenditure under various heads, viz., totaling 77 heads, the petitioner has not got any approval from the Panchayat Council and without any approval, he had spent such a huge amount, for which, no substantial proof has been produced by the petitioner.

17. Even though, his reply to the 1st respondent that the charges were framed prior to issue of recovery order dated 21.03.2008, it could be seen from the records that the petitioner has not produced any information in support of expenditure incurred by him under various heads and such expenditure being approved by the Council. As per the conditions contained in the Tamil Nadu Panchayats Act 1994, the president of the panchayat cannot independently take decision, especially, in the matters of expenditure and the same being approved by the Panchayat Council. In the absence of any such approval from the Council, the action of the petitioner for incurring expenditure of Rs.6,80,403/- is illegal. The 1st respondent, on receipt of the explanation given by the petitioner, not being satisfied with the same, proceeded to issue recovery notice as he is empowered under Section 204(3) of the Tamil Nadu Panchayats Act, 1994, to take action against the Village Panchayat President or any Executive Authority. It is also seen from the records that proper procedures have been followed by the authorities before conducting such enquiry.

18. Under the above circumstances, it is crystal clear that the impugned order was issued after following the procedures under the Tamil Nadu Panchayats Act, 1994 and affording sufficient opportunity to the petitioner. Hence, this petitioner cannot sustain this Writ Petition for the above reasons. On careful perusal of the records produced, it could be seen that the petitioner has given neither satisfactory explanation nor any acceptable reason why he has spent such huge amount, without such expenditure being approved by the Panchayat Council. Mere allegation against the members of the council does not empower the president to act unilaterally, especially, when handling public money. Even if other members are not co-operating with the action taken by the petitioner, the petitioner being the President of the Panchayat, cannot act unilaterally, which renders the procedures contemplated under the Panchayat Act, ineffective.

19. The petitioner, while being questioned, has produced the medical certificate from the local doctor and was absent for

more than six months. During which period, the Council was not able to meet and attend several complaints against the petitioner for his irregularities, which is crystal clear from the no confidence motion moved by the members of the council and submitted to the 1st respondent. Apart from this, the ratification sought for by the petitioner is also after the impugned order being passed ordering recovery of a sum of Rs.6,80,403/- from the petitioner. In the impugned order, the details regarding the amount spent by the President unauthorisedly, has been incorporated. Under these circumstances, this Court is not inclined to interfere with the impugned order.

20. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Collector,
Coimbatore District.
2. The Assistant Director of Panchayat,
Coimbatore.
3. The Block Development Officer
(Panchayat), Thondamuthur,
Coimbatore.
4. The Tahsildar,
Coimbatore (South)
Coimbatore District.

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No. 89256
+1cc to the Government Pleader, S.R.No. 89932

W.P.No.13971 of 2008

and

M.P.No.1 of 2008

NRL (CO)
GN(22/02/2019)