

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15308 of 2015

and W.M.P.No.1 of 2015

K.Balachandran,
Vice Chairman: Panamarathupatti I Grade Town Panchayat,
Panamarathupatti,
Salem-636 204,
Salem District. ..Petitioner

vs

1. The State of Tamil Nadu,
Rep. by the Secretary,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai- 600 009.
2. The Director of Town Panchayats,
"Kuralagam Buildings"
Chennai- 600 104.
3. The Director of Vigilance & Anti-Corruption,
Chennai- 600 028.
4. The District Collector,
Salem District,
Salem.
5. The Assistant Director of Town Panchayats,
Salem Zone,
Collectorate,
Salem.
6. P.K.Madhaiyan,
Executive Officer,
Jalakandapuram Town Panchayat,
Salem District.
7. The Executive Officer,
Panamarathupatti I Grade Town Panchayat,
Panamarathupatti,
Salem District. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 5 to recover the sum of Rs.33,53,580.20 (Rupees thirty three laksh, fifty three thousand, five hundred and eighty and paise twenty only) from the 6th respondent and consequently to take necessary action against the 6th respondent for having caused the said huge sum of loss to the petitioner Town Panchayat.

For Petitioner : Mr.K.Selvaraj
For RR 1 to 5 : Mr.M.Elumalai
Government Advocate
For R6 : Mr.G.Sankaran
For R7 : Mr.R.M.Muthukumar

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents 1 to 5 to recover the sum of Rs.33,53,580.20 (Rupees Thirty Three Laksh, Fifty Three Thousand, Five Hundred and Eighty and paise twenty only) from the 6th respondent and consequently to take necessary action against the 6th respondent for having caused the said huge sum of loss to the petitioner Town Panchayat.

2. The present writ petition is filed on the ground that the sixth respondent had misappropriated huge amount from the Town Panchayat funds. The Audit Party conducted inspection and found that the huge amount of Rs.33,53,580.20/- had been misappropriated by the sixth respondent. The details of the audit report are enclosed in page No.5 of the typed set of papers filed along with the writ petition. The details of the amount misappropriated and the particulars are also provided in the Audit Report. Thus, it is made clear that the financial loss caused to the Town Panchayat is to be recovered by the authorities from the persons, who all are responsible for such financial loss to the Town Panchayat. For this purpose a show cause notice is to be issued to the persons who all are liable and on receipt of any explanations if any, submitted by the employees, thereafter, the authorities competent are bound to initiate recovery proceedings for the purpose of recovering the financial loss caused to the Town Panchayat. The respondents 1 to 5 are public Officials and the custodian of the public funds. The public funds are to be maintained and protected prudently

and diligently. In the event of any financial loss to the State Exchequer or to the Town Panchayat, the competent officials must recover the same from the persons concerned without any delay. In the event of not effecting recovery by such Officials, then the State shall initiate appropriate action against the superior Officials and recover the same from their salary. Not protecting the funds of the State Exchequer is also misconduct and higher officials if fails to initiate appropriate action for the recovery of the financial loss caused to the Town Panchayat or to the State, then, such officials are also certainly liable for prosecution for their negligence, dereliction of duty and for causing loss to the public funds.

3. After all, the funds of the tax payers are utilised for public purposes. Thus, the officials and the public servants are accountable not only to the State but also to the public at large. The accountability, integrity, honesty of these officials are to be ensured only through their actions. In the present case, proof has been filed by the writ petitioner showing that there is a huge loss of Rs.35,53,580.20/- to the Town Panchayat. However, the writ petition also stipulates that the sixth respondent is responsible for such huge financial loss to the Town Panchayat. This apart, the case has been referred to the Vigilance Department for further action and for initiation of action under the penal provisions. However, initiation of disciplinary action under the penal provisions are unconnected with the recovery of the public money from the officials concerned. Two fold actions are certainly permissible. If an employee made a financial loss, the first action would be to recover the loss caused to the State Exchequer. The second action would be to initiate disciplinary proceedings and criminal prosecution if necessary under the provisions of the Rules and the Laws. Mere pendency of the disciplinary proceedings or criminal case would not preclude the authorities from recovering the loss occurred to the Town Panchayat or to the State Ex-chequer.

4. This being the principles to be followed, there is no reason for the authorities to prolong the matter in respect of the recovery of the financial loss caused to the Panamarathupatti Town Panchayat. In the present case, Mr.K.Ganesan, Executive Officer, Town Panchayat, Panamarathupatti, Salem District, who is present before this Court informed that the writ petition as well as the Vigilance Proceedings is pending that is the reason why the recovery proceedings has not been initiated. This court is unable to understand the attitude of the Officials. The writ petition itself is for a direction for recovery of the financial loss occurred to the Town Panchayat.

5. In such circumstances there is no reason to keep the file in abeyance on the ground that the writ petition is pending. It is the attitude of the officials that if it is inconvenient for them, they are not initiating appropriate action and only in convenient cases, they are initiating urgent action. Such attitude of selective amnesia is to be avoided, more specifically, in public services. Public servants are bound to act in the interest of public and in accordance with the rule of law. Integrity and honesty must be the predominant character of a public servant and there cannot be any leniency either by the Courts or by the State in respect of these characters to be maintained by the public servants without any fail. The reasons submitted by the official, who is present before this Court is neither candid nor convincing. However, the reason is evasive. When the huge amount of such small Town Panchayat is misappropriated by the employee and no actions are taken for the past many years to recover such financial loss, it is painful to observe that the Officials have not acted diligently and efficiently and all the officers, who all are responsible for not initiating any appropriate action for the recovery of financial loss caused to the Town Panchayat.

6. In this view of the matter, ***this Court has no hesitation to direct the respondents 1 to 5 to initiate appropriate action against the 6th respondent** to recover the entire financial loss occurred on account of illegal acts of the employees or otherwise by following the procedures contemplated under the Rules for recovery. The exercise shall be done without any further delay and the same is to be done forthwith.

7. With these observations, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS IX)

dt.9.7.2018

*Amended as per order dt.12.7.2018

Sd/-

Assistant Registrar(CS V)

dt.18.7.2018

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The State of Tamil Nadu,
Municipal Administration & Water Supply Department,
Fort St. George,
Chennai- 600 009.
2. The Director of Town Panchayats,
"Kuralagam Buildings"
Chennai- 600 104.
3. The Director of Vigilance & Anti-Corruption,
Chennai- 600 028.
4. The District Collector,
Salem District, Salem.
5. The Assistant Director of Town Panchayats,
Salem Zone,
Collectorate,
Salem.
6. The Executive Officer,
Panamarathupatti I Grade Town Panchayat,
Panamarathupatti, Salem District.

+1cc to Mr.K.Selvaraj, Advocate, S.R.No. 38550
+1cc to Mr.K.Selvaraj, Advocate, S.R.No. 45905
+1cc to the Government Pleader, S.R.No. 39568, 37539
+1cc to G.Sankaran, Advocate Sr.No.46364

W.P.No.15308 of 2015

VG II(CO)
BM 10/07/2018
sm:18.7.2018

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