

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18462 of 2007

P.V.Mani @ Palanisamy

... Petitioner

Vs.

1.The District Collector,
Inspector of Panchayat,
Coimbatore District,
Coimbatore - 641 018.

2.The Block Development Officer (Panchayat)
Perianaickenpalayam, Coimbatore - 641 020.

3.The Assistant Director of Rural Development (Audit)
Coimbatore - 641 018.

4.K.Valarmathi ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the concerned records relating to the Order No.Na.Ka.1044/06/A1, dated 03.05.2007 passed by the 3rd respondent and quash the same.

For Petitioner : Mr.C.K.Chandrasekar

For Respondents: Mrs.K.Bhuvaneswari for R1 to R3
Additional Government Pleader
Mr.Kumar for R4

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorari calling for the concerned records relating to the Order No.Na.Ka.1044/06/A1, dated 03.05.2007 passed by the third respondent and to quash the same.

2.The case of the petitioner is that he is the President of the Kurudampalayam Panchayat and the fourth respondent is the Vice President of the Kurudampalayam Panchayat. Since complaints were received against the fourth respondent that she

was misusing the post of Vice President and threatening the Contractors and demanding commission for signing the cheques as second signatory, the Panchayat passed a resolution on 27.12.2004 taking away the power to sign the cheques from the fourth respondent and empowering one Damodaran, Panchayat Member with the said power of second signatory.

3.It is the further case of the petitioner that the fourth respondent did not attend three meetings of the Panchayat consecutively on 23.12.2004, 27.12.2004 and 21.01.2005 and she

also failed to pay the house tax for the years 2003-04 and 2004-05. Hence she had been ceased to be a member under Sections 38 (i) and 38 (j) of the Tamil Nadu Panchayat Act, 1994 (hereinafter will be referred to as the 'Act') and a notice dated 24.05.2005 was also issued to the fourth respondent. However, she did not apply for restoration as prescribed under Section 39 (2) of the Act and has also not taken any steps under Section 41 of the Act.

4.It is the further case of the petitioner that a Resolution was passed on 29.07.2005 approving the action taken under the notice dated 24.05.2005 and the Resolution was also approved by the first respondent on 31.12.2004. Challenging the order dated 31.12.2004, the fourth respondent filed W.P.No.31714 of 2005 before this Court. This Court vide order dated 16.02.2006 allowed the writ petition based on a Division Bench judgment of this Court, wherein, it was held that the Collector has to issue notice to the Vice President and has to apply his mind independently as to the allegations on which the decision of withdrawal of Cheque signing power is to be taken.

5.It is the further case of the petitioner that thereafter the first respondent issued a notice dated 07.04.2005 proposing to take action

under Section 205 of the Tamil Nadu Panchayat Act, 1994. The petitioner submitted his detailed representation dated 18.04.2005 giving explanations to all the charges.

6.It is the further case of the petitioner that since there were several complaints against the fourth respondent, some of the locals, mainly one Appaiyan filed writ petition before this Court in W.P.No.40413 of 2005 seeking Mandamus directing the first respondent therein to pass final order on the notice dated 07.04.2005 and the Hon'ble First Bench of this Court vide order dated 20.12.2005, disposed of the writ petition by recording the submission made by the learned Government Pleader that the first respondent therein shall consider the replies given by the President and Vice President of the Panchayat and after granting

personal hearing to the parties, will pass appropriate orders. However, without conducting any enquiry and without giving any opportunity, the impugned order directing the petitioner to pay a sum of Rs.12,85,851/- came to be passed. Aggrieved by the same, the petitioner has preferred this writ petition.

7.The learned counsel for the petitioner would submit that the impugned order was passed by the third respondent without following due process of law and it is against the principles of natural justice. He would further submit that based on the interim order of this Court dated 26.10.2007 the petitioner has deposited 50% of the amount and would further submit that this Court may remand the matter back to the third respondent and issue direction to the third respondent to conduct fair enquiry and pass appropriate orders.

8.This Court also heard the submissions made by the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

9.Perusal of the records disclose that before passing the impugned order, no notice calling upon the petitioner to submit his explanation was given to the petitioner and no enquiry was conducted. Hence passing of the impugned order is per se irregular and clear violation of principles of natural justice. Hence, I am inclined to remand the matter back to the third respondent. The third respondent, without refunding the amount deposited by the petitioner and by following the due process of law and relevant Rules, shall pass appropriate orders, as expeditiously as possible and in accordance with law.

10.The writ petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Inspector of Panchayat,
Coimbatore District,
Coimbatore - 641 018.

2.The Block Development Officer (Panchayat)
Perianaickenpalayam, Coimbatore - 641 020.

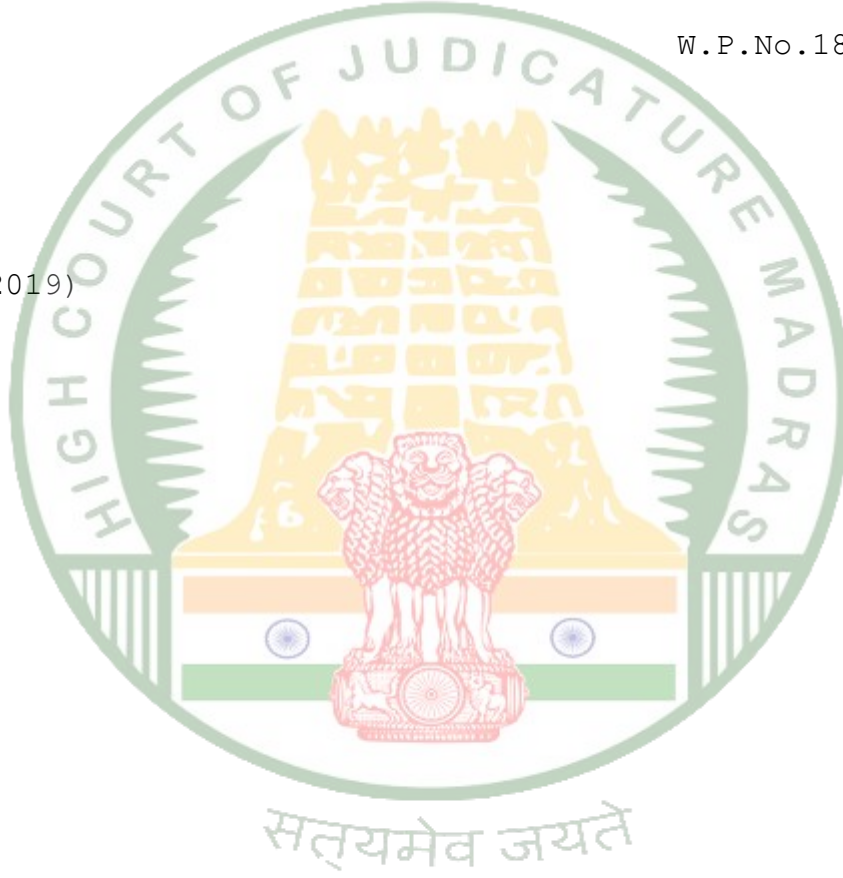
3.The Assistant Director of Rural Development (Audit)
Coimbatore - 641 018.

+1 CC to Mr.C.K.Chandrasekar, Advocate sr 51929.

+1 CC to Govt. Pleader sr 52296.

W.P.No.18462 of 2007

SJ(CO)
SP(02/08/2019)



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