

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.8076 of 2004

and

WPMP.No.9520 of 2004

1. D.Jayabalan Duraisamy, Ex-President (Died)
Keelakadayam Panchayat
Ambasamudram Taluk
Tirunelveli District
2. Saroja
P2 substituted as LRs of Deceased
P1 D.Jayabalan Duraisamy as per
order dated 16.08.2017 by MDIJ in
WMP.No.20513 of 2017 in
W.P.No.8076 of 2004

...Petitioners

vs

1. The Secretary of Government,
(Rural Development)
Fort St. George, Chennai-9.
2. The District Collector,
Tirunelveli District.
3. The Assistant Director, Rural Development
(Audit) Tirunelveli
4. The Block Development Officer,
Kadayan, Tirunelveli District.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus or any other appropriate writ, order or direction in the nature of a writ, call for the records relating to the GO (ID) No.61 dated 9.2.04 on the file of 1st respondent and quash the order passed by the 1st respondent on 9.2.04 and consequently direct the respondents not to collect the surcharge from the petitioner.

For Petitioners : Mr.P.Soundarapandian

For Respondents : Mrs.K.Bhuvaneswari, AGP

O R D E R

The writ petition is filed to issue direction to call for the records relating to the GO (ID) No.61 dated 9.2.2004 on the file of 1st respondent and quash the same and consequently direct the respondents not to collect the surcharge from the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner was elected as President, Kadayam Panchayat Union, Ambasamudram Taluk, Tirunelveli District and worked as Panchayat President during the year 1999-2000 and 2000-01 and the villagers were very much benefited during his regime. The Keelakadayam Village Panchayat consists nearly of eleven villages and all the villages are well nourished and basic amenities are provided with utmost care.

3. The learned counsel for the petitioner further submitted that during the tenure as President of Village Panchayat many works were done by the Panchayat as per the guidelines and rules framed by the Government of Tamil Nadu. Many of the works were carried out by the Diploma/Graduate Engineer as per G.O.NO.135 of local Administration Department. The entire works were carried out with due care, caution and compliance with the above said G.O. Many of the works like laying of cement roads, construction of walls, earth work, carpentry work and maintenance of water pipe line works were done only for the benefit and upliftment of villagers.

4. While being so, the Assistant Executive Engineer (Rural Development), Cheranmahadevi had inspected the work done and filed a report that a sum of Rs.92,045/- was spent excessively for the works done during his tenure. Thereafter the 3rd respondent passed an order directing the petitioner to pay a sum of Rs.92,046/-. As against the said order, the petitioner made a further representation to the respondent to furnish the document enabling the petitioner to file an appeal. Accordingly, the petitioner perused the documents and sent a reply on 13.09.2003. The third respondent without considering the reply submitted by the petitioner has passed orders confirming the demand of Rs.95,046/-. Thereafter the petitioner filed an appeal on 17.10.2003 before the second respondent. The second respondent without considering the grounds raised in the appeal mechanically rejected the appeal on 03.11.2003. Against this order of the second respondent, the petitioner preferred

further appeal before the Government on 27.11.2003, the Government also rejected the appeal on 09.02.2004, against which the present Writ Petition is filed.

5. The Learned counsel appearing for the petitioner would submit that the G.O.Ms.No.135 dated 03.07.1998, the circular dated 29.07.1998 was issued by the Director of Rural Development, according to which, if the value of the work to be carried out is beyond Rs.1,00,000/- only then there is need to get approval from the Block Development Officer. The petitioner had allotted the work to those Diploma-holders registered as contractors following the tender rules and the work allotted was of the value of less than Rupee one lakh. However, without considering the said G.O.No.135, the original authority as well as the appellate authority has passed orders mechanically, which is unsustainable one and hence prayed for allowing the writ petition.

6. Per contra, Mrs. K. Bhuvaneswari, learned Government Pleader would submit that the President has to act as President as well as the executive officer of the village. Further, council sanction has to be obtained for each and every work as per the Panchayat Act, 1994. But, the petitioners divided one work of the value of more than 12 lakhs, divided into 55 works want only on the strength of the resolution of Panchayat and thereby made excess payment. The Appeal preferred by the second respondent was rejected only on the basis of the genuineness of the reports submitted by the Technical Inspectors. As per G.O.Ms.No.264 dated 21.12.1999 and G.O.Ms.No.265 dated 22.12.1999, the Deputy Block Development Officer (Audit) and Assistant Director of Rural Development (Audit) are vested with the powers to inspect the activities of the Village Panchayats. It is apparent that the petitioner has divided from the Rules and divided one work of the cost of more than 12 lakhs into 55 works and thereby made excess payment of Rs.92,046/- and created loss to the Panchayat.

7. On perusal of the records, it is seen that the allegation of the petitioner that all the three authorities including the Government have not considered the explanation given by him and passed orders without following the due process of law and ordered for the payment of Rs.92,046/- was not established. It is also seen that the petitioner has not obtained appropriate technical sanction before executing the work by engaging diploma engineers. Further, the original authority and appellate authority including the Government had appreciated the enquiry and consequential report of the Assistant Executive Engineer appropriately. Unless it is established that all authorities are perverse and passed orders arbitrarily, the same cannot be interfered with. In the present case, the petitioner did not

establish that the notice was issued arbitrarily or with perversity. Accordingly, I am not inclined to interfere with the impugned order passed by the first respondent. However, considering the long pendency of the proceedings for 19 years, the petitioner is directed to pay the sum of Rs.92,046/- to the third respondent without any penal interest within a period of eight (8) weeks from the date of receipt of a copy of this order. Writ Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Secretary of Government,
(Rural Development)
Fort St. George, Chennai-9.
2. The District Collector,
Tirunelveli District.
3. The Assistant Director, Rural Development
(Audit) Tirunelveli
4. The Block Development Officer,
Kadayam, Tirunelveli District.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.55384

सत्यमेव जयते

W.P.No.8076 of 2004
and
WPMP.No.9520 of 2004

BS(CO)
CS/25/09/2019

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