

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
26.09.2019	03.10.2019

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.18255 of 2017

and

W.M.P. (MD) No.14694 of 2017

V.Paulraj

... Petitioner

-vs-

1. The State of Tamilnadu
Rep.by its Secretary
Rural Development and
Panchayat Raj Department
St.George Fort
Chennai-600 009

2. The Director
Rural Development and
Panchayat Raj Department
Panagal Building
Saidapet
Chennai-600 015

3. The District Collector cum
Inspector of Panchayats
Nagarcoil
Kanyakumari District

4. The Assistant Director of
Rural Development (Audit)
Nagercoil
Kanyakumari District

5.Prabha

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 1 to 4 herein especially the third and fourth respondents herein, to consider the representation of the petitioner, in parawise, dated 08.02.2017 and to initiate criminal prosecution as well as surcharge proceedings as against the fifth respondent, on the basis of the



audit report from the year 2005-2006 to 2012-2013, finding with the financial irregularity committed in the Mullanginavilai Village Panchayat by the fifth respondent as in the capacity of Panchayat President and to recover the amount swindled by the fifth respondent as per law.

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For Petitioner : Mr.C.Kishore
For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader for R1 to R4
Mr.M.R.Sreenivasan for R5

O R D E R

T.S.SIVAGNANAM, J.

The petitioner, by way of this writ petition designed as public interest litigation, seeks for a direction upon the respondents 1 to 4, more particularly, respondents 3 and 4, namely, the District Collector, Kanyakumari District and Assistant Director of Rural Development (Audit), Nagercoil, to initiate criminal prosecution as well as surcharge proceedings as against the fifth respondent, on the basis of the audit report from the year 2005-2006 to 2012-2013 alleging that the fifth respondent, in the capacity of the President of Mullanginavilai Village Panchayat, has swindled the Panchayat funds and committed various other financial irregularities.

2. The petitioner is a permanent resident of Mullanginavilai Village Panchayat and was the former President of the said Village Panchayat during 1986-1991. After expiry of the term of his office, the petitioner is stated to have gone abroad to eke out his livelihood. It appears that after the petitioner returned to India, he has expressed certain grievances about the fifth respondent, who had been elected as the President of the said Village Panchayat. The petitioner is stated to have obtained information under the Right to Information Act, with regard to the audit reports of the Village Panchayat from the year 2005-2006 to 2012-2013 and by relying upon those reports, it is stated that the fifth respondent has misappropriated the Panchayat funds. It is further stated that in spite of serious objections and findings recorded in the audit report against the functioning of the fifth respondent, the respondents 1 to 4 did not take any action and no punishment was imposed on the fifth respondent. It is further submitted that the fifth respondent, without any jurisdiction and authority, appointed a person as "Water Supply Attender", by illegally incorporating a resolution, which was never passed. It is further submitted that the said appointee filed a writ petition before this Court for a direction to pay daily wages, which was allowed. Therefore, the fifth respondent has also misled this Court.



3. It is further submitted that the third respondent / District Collector-cum-Inspector of Panchayats is stated to have conducted an enquiry and ultimately, a finding was given that the fifth respondent had illegally appointed the Water Supply Attender. It is further submitted that though action, under Section 205 of the Tamil Nadu Panchayats Act, 1994 (in short, "the Act"), was initiated against the fifth respondent by the third respondent based on the findings of the Block Development Officer, Killiyoor, dated 12.09.2014, it was not finalized till the expiry of the tenure of the fifth respondent as President of the Village Panchayat. Further, it is submitted that though the financial irregularity, as per the audit reports, was to the tune of more than rupees fourteen lakhs, the actual financial irregularity would be much more. It is further submitted that the cheque signing power of the fifth respondent was also withdrawn by the District Collector. Thus, the petitioner would state that he has set out all the facts by way of a representation and sent to the official respondents on 08.02.2017. However, till date, no action has been taken based on such representation, which necessitated the petitioner to approach this Court by way of this writ petition.

4. Mr.C.Kishore, learned counsel appearing for the petitioner, made elaborate reference to the factual details, much of which have been set out by us in the preceding paragraphs. The learned counsel has referred to the voluminous set of documents filed in the typed set of papers, namely, audit reports for the years from 2005-2006 to 2012-2013; order dated 20.09.2011, passed in W.P.(MD) No.10665 of 2011 filed by the Water Supply Attender; order passed by the District Collector, dated 13.12.2011, appointing an officer for checking the accounts of the Village Panchayat; order dated 04.04.2014, passed in W.P.(MD) No.16995 of 2012, filed by one Mr.Jain Jerald, Vice-President of the Village Panchayat, for a direction to the authority concerned to consider his representation and to remove the fifth respondent from the post of President, which writ petition was disposed of with a direction to consider his representation; communication dated 07.08.2014, sent by the District Collector to Mr.Jain Jerald with regard to the action being taken against the fifth respondent, under Section 205 of the Act; order dated 01.09.2014, passed in Cont.P.(MD) No.815 of 2014, filed by Mr.Jain Jerald; communication of the Block Development Officer to the Assistant Director (Panchayats), dated 12.09.2014, directing enquiry to be conducted; report of the Block Development Officer, dated 21.10.2014; representation of Mr.Jain Jerald, dated 18.11.2014; show-cause notice issued to the fifth respondent, under Section 205 of the Act, dated 05.02.2015; proceedings of the Tahsildar, Vilavancode, pursuant to the proceedings of the District Collector-cum-Inspector of Panchayats, calling for meeting; various informations secured by the petitioner under the Right to Information Act; representation of the petitioner, dated 08.02.2017; order dated 20.07.2017, passed in W.P.(MD) No.12098 of 2017 filed by the petitioner for identical relief, which was dismissed with



liberty to produce materials to substantiate the allegations made against the fifth respondent.

5. The learned counsel for the petitioner referred to the other documents filed in the additional typed set of papers, which includes the proceedings of the fourth respondent, dated 05.01.2018, 21.03.2018, 19.05.2018 and 25.05.2018, these are all the proceedings by which information was furnished to the petitioner under the Right to Information Act. Thus, the endeavour of Mr.C.Kishore, learned counsel for the petitioner is to convince this Court that the fifth respondent has to be proceeded with and though proceedings, under Section 205 of the Act, were initiated, the matter was not taken to the logical end and by then, her tenure was expired. Therefore, the learned counsel submits that the direction sought for in the writ petition may be issued.

6. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 to 4, submitted that the term of office of the fifth respondent is already over. The District Collector, who is the Inspector of Panchayats, has taken appropriate action and at this juncture, seeking for a direction, as sought for in the writ petition, is not maintainable and prayed that the writ petition may be dismissed.

7. Mr.M.R.N.Sreenivasan, learned counsel appearing for the fifth respondent, submitted that the fifth respondent has been the most popular President; dedicated herself to the duties and responsibilities assigned to her; but, she was unnecessarily targeted, harassed and put to great prejudice by the petitioner and his group of persons; several cases were filed by the Vice-President of the Village Panchayat and the fifth respondent was harassed and ultimately, the District Collector, after considering all the issues, including the reply given by the fifth respondent, thought fit not to proceed further in the matter.

8. The learned counsel for the fifth respondent further submitted that all the allegations made against the fifth respondent are thoroughly vexatious and the Authorities have examined all the records and there is no infringement of the rules, more particularly, Rule 8 of the Tamil Nadu Panchayats (Issue and Disposal of Audit Report of Village Panchayats) Rules, 2000 (in short, "the Rules") and the present attempt of the petitioner is with *mala fide* intention and therefore, the prayer sought for by the petitioner may be rejected. In support of his contentions, the learned counsel for the fifth respondent placed reliance on the decision of the Honourable Full Bench in the case of **District Collector & Inspector of District Panchayat vs. Devi Parasuraman**, reported in (2009) 7 MLJ 417 (FB) and the decision of the Division Bench in the case of **K.Ramalingam vs. The Secretary to Government, Department of Local Administration**, reported in 2011 (2) CTC 134.



9. We have heard the learned counsel for the parties.

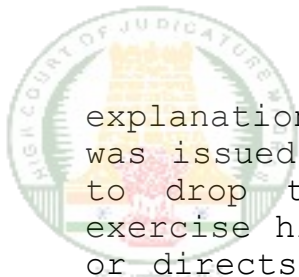
10. Section 205 of the Act deals with removal of President. Sub-Section (1) of Section 205 of the Act states that the Inspector (District Collector), (a) of his own motion, or (b) on a representation in writing signed by not less than two-third of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat, is satisfied that the President willfully omitted or refused to carry out or disobeyed any provision of the Act, or any Rule, bye-law, Regulation or lawful order made or issued under the Act or abused any power vested on him, the Inspector shall, by notice in writing, require the President to offer, within a specified date, his explanation with respect to the acts of omission or commission mentioned in the notice.

11. In terms of Sub-Section (2) of Section 205 of the Act, if the explanation is received within the specified date and if the Inspector considers that the explanation is satisfactory, he may drop further action. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward it to the Tahsildar for ascertaining the views of the Village Panchayat.

12. In terms of Sub-Section (3) of Section 205 of the Act, the Tahsildar shall thereafter convene a meeting of the Village Panchayat.

13. In terms of Sub-Section (10) of Section 205 of the Act, the views of the Village Panchayat should be duly recorded in the minutes to be forwarded to the Inspector. The Inspector may, after considering the views of the Village Panchayat, in his discretion either remove the President from office or drop further action, by exercising the power under Sub-Section (11) of Section 205 of the Act.

14. Thus, on a plain reading of the above provisions, it is seen that the power is exercisable when the incumbent holds the office as President of a Village Panchayat. Apart from that, the power is exercisable at the discretion of the Inspector of Panchayats. The Inspector should be satisfied that the President of the Village Panchayat has willfully omitted or refused to carry out or disobeyed the provisions of the Act or lawful orders or abused any power vested on him, then it would give rise to issuance of a show-cause notice to the President. The various Sub-Sections of Section 205 of the Act are so-couched to ensure that the mandate of the electorate is respected and by executive fiat, an elected President should not be dislodged from the elected office. If



explanation offered by the President, to whom a show-cause notice was issued, is found to be satisfaction, the Inspector is empowered to drop the further proceedings. However, if he proposes to exercise his powers under Sub-Section (2) of Section 205 of the Act or directs the Tahsildar to convene a meeting for ascertaining the views of the Village Panchayat, after obtaining the views of the Village Panchayat, the Inspector, in his discretion, may either remove the President from the office or drop further action. Therefore, the petitioner cannot now state that the power, under Section 205 of the Act, should be invoked and the matter should be taken to the logical end and criminal prosecution should be initiated against the fifth respondent.

15. Admittedly, during the period, when the fifth respondent was the President of the Village Panchayat, the petitioner was not in India and was working abroad. This is admitted by the petitioner in his affidavit. During the relevant period, one Mr.Jain Jerald, Vice-President of the Village Panchayat, was filing writ petitions and unfortunately, in none of the writ petitions any positive direction was issued to the Authorities to take action against the fifth respondent. Presumably, after the petitioner returned to India, he revived the old issues, obtained information under the Right to Information Act, sent representation and commenced the second round of litigation in his name and the earlier writ petition in W.P.(MD) No.12098 of 2017 was dismissed on the ground that the petitioner has not produced any material to substantiate his contention that the fifth respondent misappropriated the funds of the Village Panchayat and therefore, the writ petition was dismissed with liberty to the petitioner to produce material to substantiate the allegations against the fifth respondent. The liberty granted by the Division Bench, in its order dated 20.07.2017 in W.P.(MD) No.12098 of 2017, is not to file a fresh writ petition, but, if the petitioner had material, he should have approached the concerned Authority, which in our view cannot be done at this distance of time, after the fifth respondent has demitted office as the President of the Village Panchayat.

16. Furthermore, the material based on which, now the petitioner has approached this Court is the material based on which, the then Vice-President of the Village Panchayat filed writ petitions from the year 2012. Admittedly, the petitioner does not state about anything which has happened in the recent past i.e. till the petitioner demitted the office in the year 2018. The allegations all pertain to the year 2012-2013 and for the earlier period. Therefore, we cannot permit the petitioner to restart a stale claim again, after the efforts made by the then President did not fructify into the result to satisfy their desire. That apart, the earlier writ petition filed by the petitioner was dismissed for want of material as liberty granted to the petitioner cannot be permitted to be misused for the purpose of commencing a second round



of litigation on the same material based on which the then Vice-President of the Village Panchayat Mr.Jain Jerald had litigated before this Court against the fifth respondent.

17. Thus, for the above reasons, we hold that the petitioner has not made out any case for issuance of any direction as sought for by the petitioner in this writ petition.

18. In the result, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Secretary,
Rural Development and
Panchayat Raj Department,
St.George Fort,State of Tamilnadu,
Chennai-600 009.
2. The Director,
Rural Development and
Panchayat Raj Department,
Panagal Building,
Saidapet,Chennai-600 015.
3. The District Collector-cum-
Inspector of Panchayats,
Nagarcoil,Kanyakumari District.
4. The Assistant Director of
Rural Development (Audit),
Nagercoil,Kanyakumari District.

+1 CC to Mr.M.R. SREENIVASAN,Advocate(SR-91076[F] dated 03/10/2019)
+1 CC to Mr.C.KISHORE, Advocate (SR-91159[F] dated 03/10/2019)
+1 CC to SPL GP (SR-91341[F] dated 04/10/2019)

ORDER IN
W.P. (MD) No.18255 of 2017 and
W.M.P. (MD) No.14694 of 2017
03.10.2019

krk

VB(16.10.2019) 7P 8C