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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.17475 of 2021
and W.M.P.Nos.18555, 18556, 18558 & 24026 of 2021

S.Preethi ... Petitioner

-Vs-

1.The Sub Divisional Executive Magistrate-cum-
Revenue Divisional Officer,
Erode Division, Erode.

2.The Block Development Officer
Kodumudi Panchayat Union,
Kodumudi-638 151
Erode District.

3.The District Collector /Inspector of Panchayat
Erode District, Erode.

4.R.Lakshmi

5.P.Paramasivam

6.C.Valarmathi

7.T.T.Palanisamy

8.M.A.Palanisamy

... Respondents

(R4 to R8 impleaded vide order dt 29.09.2021 made in
WMP 21085/2021 in WP 17475/2021 by NAVJ)

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records relating to the impugned resolution dated 13.08.2021 preside over by the 1st respondent and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Richardson Wilson
Additional Government Pleader - for RR1 and 2
Mrs.V.Yamuna Devi
Special Government Pleader - for R3
Ms.R.Shase for M/s.M.Guruprasad
- for RR 4 to 8



O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the entire records relating to the impugned resolution dated 13.08.2021 presided over by the 1st respondent and quash the same.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows.

The petitioner was elected as Vice Chairman of Kodumudi Panchayat Union in Erode District. There are totally six ward members in the said Panchayat Union. She was elected as ward member from Ward No.6 of the Panchayat Union in the local body elections conducted in the year 2019 and she was successfully elected as the Vice Chairman of the Panchayat Union.

3. When that being so, there was a move by the other members to bring a no-confidence motion against the petitioner. Accordingly, as per the procedure contemplated under Section 212 of the Tamil Nadu Panchayat Act, 1994 (In short 'the Act'), majority members of the Panchayat Union have given a no-confidence motion notice on 03.02.2021 along with the written statement of the charges signed by all the members.

4. It is the case of the petitioner that, on 03.02.2021 it was claimed that there was a meeting conducted in the Panchayat Union Council, where the notice given by the majority members expressing no-confidence against the petitioner / Vice Chairman was taken up and decided to issue a notice to the petitioner to seek for reply as contemplated under sub-section (2) to Section 212 of the Act.

5. The said procedure, according to the petitioner, was not properly followed, as according to the petitioner, there was no meeting conducted on 03.02.2021 as claimed by the respondents. Therefore, challenging the notice issued in this regard dated 04.02.2021 in Na.Ka.No.589/2021/A2, the petitioner moved a writ petition in W.P.No.4715 of 2021 to quash the show cause notice dated 04.02.2021 on the ground that the said show cause notice was served without enclosing any documents therein. However, the said writ petition was disposed of by this Court stating that, there is no error in the said procedure adopted by the respondents. Therefore, the notice was sustained and hence the petitioner was given 15 days time to give reply to the notice dated 04.02.2021.

6. Pursuant to the said order passed by this Court, the



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petitioner has given the reply dated 25.03.2021. Thereafter, as per the procedure contemplated under Section 212(4) of the Act, the second respondent, on receipt of the reply dated 25.03.2021 from the petitioner, had sent a proceedings dated 07.07.2021 to convene a meeting on 03.08.2021 at 11.00 a.m., to decide the no-confidence motion against the petitioner.

7. However, due to the reason that there would be some gathering towards the memorial day of Late Shri Dheeran Chinnamalai on that date ie., 03.08.2021, on the date the meeting was fixed, the second respondent cancelled the meeting. Accordingly, on 23.07.2021, he sent a communication cancelling the said meeting under the procedure contemplated under Section 212(6) of the Act.

8. Thereafter, as per the procedure contemplated under Section 212(7) of the act, the second respondent, fixing the meeting to consider the no-confidence motion on 13.08.2021 at 11.00 a.m., issued a notice on 02.08.2021, which according to the petitioner, was served on the petitioner only on 07.08.2021. In this regard, it is the case of the petitioner that, as per Section 212(7) of the Act, since 7 days clear notice has to be given before conducting an adjourned meeting of no-confidence motion and the said 7 days clear notice has not been given, as between 07.08.2021 and 13.08.2021, only 5 clear days are available, the notice itself is infirm and based on which the second meeting ie., adjourned meeting under Section 212(7) should not have been conducted on 13.08.2021.

9. Nevertheless, since the meeting as proposed on 13.08.2021 was conducted where a resolution of no-confidence motion against the petitioner was passed, opposing the same, the petitioner, after registering her protest, walked out from the meeting. Therefore, challenging the said no-confidence motion proceedings based on the meeting dated 13.08.2021, whereby the petitioner since being removed from the post of Vice Chairman of the Panchayat Union Council, she has come out with the present writ petition challenging the said resolution.

10. Making submissions in this regard, Mr.C.Prakasam, learned counsel for the petitioner would submit that, the first violation is that, the meeting which was originally scheduled to be conducted on 03.08.2021 was cancelled, of course due to some reasons as communicated through the communication dated 23.07.2021. Thereafter, if at all they wanted to fix the adjourned meeting and which they already fixed as 13.08.2021, they should have followed the procedure contemplated under Section 212(7) of the Act, wherein the learned counsel for the



petitioner pointed out that 7 clear days notice should have been. Here in the case in hand, the petitioner was served notice dated 02.08.2021 only on 07.08.2021. Therefore, between the date on which the notice was served on the petitioner and the date on which the proposed meeting was to be held, there were only 5 clear days. Therefore, it falls short of two clear days as contemplated under Section 212(7) of the Act. Hence, the entire proceedings which culminated in the 13.08.2021 resolution is vitiated and therefore, such resolution said to have been passed on 13.08.2021 is infirm and hence it is liable to be quashed.

11. Apart from this legal ground, the learned counsel for the petitioner also made submission that, there are number of allegations made by the petitioner against the fourth respondent, who is the elected President of the Panchayat Union Council and because of such allegations constantly made by the petitioner against the fourth respondent, since she got annoyed with the constant allegations made against her, she was instrumental in mustering the strength of other members for obvious reasons and to see that the petitioner steps out of the post as Vice President, the fourth respondent made this design to bring a no-confidence motion, that too in violation of the procedure contemplated under Section 212 of the Act and hence for all these reasons also, since it has been brought under malafide reason, the impugned resolution is liable to be interfered with, he contended.

12. Per contra, Mr. Richardson Wilson, learned Additional Government Pleader appearing for the official respondents would submit that, insofar as the procedure followed as contemplated under Section 212 of the Act is concerned, absolutely there has been no deviation in any of the procedures. He would also submit that, since the first meeting scheduled to be conducted on 03.08.2021 was cancelled due to some unavoidable reason, a communication to that effect has been given on 23.07.2021. Therefore, since the next meeting was to be conducted within 30 days, the second meeting was fixed on 13.08.2021. In order to conduct the second meeting or adjourned meeting, 7 days clear notice should have been given, it was dispatched by the second respondent on 02.08.2021, which reached the petitioner on 03.08.2021. However, the petitioner, in order to avoid the receipt of the notice on 03.08.2021, 04.08.2021, 05.08.2021 and 06.08.2021, she claimed to have been not in station. But the fact remains that, on 05.08.2021, she did attend the Council meeting and therefore, after avoiding the 4 or 5 days in receiving the notice, the petitioner purposely received the



notice only on 07.08.2021. Therefore, the plea raised in this regard, ie., the only technical ground raised by the petitioner cannot be sustained as there has been 7 clear days available between the date when the notice was dispatched / served on the petitioner and the date of the meeting. Therefore, the procedure contemplated under Section 212(7) of the Act has not been violated.

13. In this context, the learned Additional Government Pleader also pointed out that, the notice in registered post had been dispatched on 02.08.2021 itself and there is a postal endorsement on 04.08.2021, 05.08.2021 and 06.08.2021 that the petitioner had not received the same and this itself makes it evident that, the petitioner purposely avoided the notice to be received. Therefore, it is the self designed reason for the purpose of challenging the no-confidence motion which is impugned herein. Therefore, the said ground cannot be sustained, he contended.

14. Also, Ms.R.Shase, learned counsel appearing for the private respondents, especially the fourth respondent, who filed the vacate stay petition also in W.M.P.No.24026 of 2021 would contend that, insofar as the allegations made against the fourth respondent by the petitioner is concerned, it is only a fake reason just to avoid the no-confidence motion which was brought against here by all members of the Panchayat Union Council.

15. She would submit that, if at all the allegations made by the petitioner against the fourth respondent is having an iota of proof, certainly this much of strength cannot be mustered by the fourth respondent and all the members cannot stand in one point to oppose the petitioner being the Vice Chairman of the Panchayat Union and therefore, that itself shows that the said allegations made against the fourth respondent by the petitioner, which is most probably reflected in the reply dated 25.03.2021 are untrue or untenable.

16. The learned counsel would further submit that, insofar as the meeting to be conducted, what should be deliberated in the meeting has also been contemplated under Section 212(10) of the Act, where it has been specifically made clear that, there shall be no debate on any motion in this Section. So, the the legislative intent is made clear that, insofar the meeting to consider the no-confidence motion, only the view of the majority to support the motion alone would be taken into account and there could be no discussion or deliberation whatsoever in detail to be made against the



17. Therefore, the learned counsel for the private respondents would contend that, the only technical ground raised by the petitioner that there was no 7 clear days notice as contemplated under Section 212(7) of the Act since is untenable and all other procedures since has been scrupulously followed in conducting the meeting, which culminated in the no-confidence motion, and the no-confidence motion resolution having been passed in the meeting held on 13.08.2021, the same cannot be successfully challenged by the petitioner, she contended.

19. As has been rightly pointed out by the learned Additional Government Pleader as well as the learned counsel appearing for the private respondents, when a no-confidence motion is brought in, the merits of such no-confidence motion or otherwise need not be discussed or deliberated in the meeting conducted in this regard to pass or to defeat the same.

21. This was happened on 03.02.2021 where all the remaining members of the Panchayat Union Council since signed in the no-confidence motion, where, along with the statement of the charges, the same has been delivered by two members in person to the second respondent on 03.02.2021.

23. Therefore, in this context, the plea raised by the petitioner's counsel that on 03.02.2021, there was no meeting



conducted at the Panchayat Union Council as the same has been communicated by the Block Development Officer through communication referred to in this regard, would have no substance.

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24. Thereafter, the second respondent has sent a communication to the petitioner to give reply to the same, which is also contemplated under Section 212(3) of the Act. After receipt of this notice, which is styled as a show cause notice, the petitioner, instead of choosing to give reply, has approached this Court by filing W.P.No.4715 of 2021 for some ground, which was in fact dismissed by this Court, however, giving 15 days time to the petitioner to reply to the show cause notice.

25. In pursuance to the same, the petitioner has give her reply on 25.03.2021. In this context, it is the contention of the learned counsel for the petitioner that once a reply is given to the show cause notice, then the veracity of the reply has to be considered by the Revenue Divisional Officer before fixing a date to consider the no-confidence motion. Such proposition proposed by the learned counsel for the petitioner is totally unsustainable because nowhere in the said Act, such kind of procedure has been contemplated. If we look at sub-sections (2) as well as (3) of Section 212, it makes it clear that once the written notice of intention of no-confidence motion is signed by the majority of the members ie., not less than 3/5th of the members as contemplated under sub-section(2), on receipt of the same, it shall be delivered in person to the Revenue Divisional Officer of the division by any two of the members of the Panchayat Union Council signing the notice together with a copy of the motion which is proposed to be made and a written statement of the charges against the person against whom the no-confidence motion is brought, giving 15 days time to reply. Therefore, as per the procedure contemplated under sub-section (4), the Revenue Divisional Officer shall convene a meeting for the consideration of the motion at the office of the Panchayat Union Council at a time appointed by him. Once the meeting is conducted as per sub-section (10), there shall be no debate or deliberation on the no-confidence motion.

26. Therefore, after receipt of the reply from the petitioner dated 25.03.2021, the same need not be verified for the veracity of the same, and accordingly no further action need to be taken except to conduct the meeting as contemplated under sub-section (4) of Section 212 of the Act. This is what has been done by the second respondent and he has done so by



convening the meeting on 03.08.2021 giving 15 days clear notice.

27. However, subsequently due to some unavoidable reason, the meeting could not be conducted on 03.08.2021. Therefore, an advance notice dated 23.07.2021 was issued in this regard by the Revenue Divisional Officer communicating the cancellation of the meeting. Once the meeting is canceled, as contemplated under sub-section (6) of the Act, then what shall be further action is contemplated under sub-section (7), under which, fresh date can be fixed within 30 days from the date already fixed for the first meeting and within the 30 days, if any adjourned date is fixed, further notice shall be given, but this time only 7 clear days notice is enough.

28. In this context, the next date for the adjourned meeting was fixed as 13.08.2021. Therefore, giving 7 clear days time, the notice was dispatched by registered post by the second respondent on 02.08.2021, which first reached the petitioner on 03.08.2021. However, from 03.08.2021 to 06.08.2021, continuously for four days, the petitioner could not receive it for the reasons best known to her. The postal endorsement made in the postal cover makes it clear that, the petitioner, in order to avoid receipt of the notice from 03.08.2021 to 06.08.2021 and in order to take a ground that there was no clear 7 days notice given to her, has avoided to receive the notice and only on 07.08.2021, she received the notice, and that has been taken as a ground in W.P.

29. However, the fact remains that, the notice was dispatched on 02.08.2021, which reached the petitioner on 03.08.2021 and from 03.08.2021 to 06.08.2021, the petitioner could not receive the notice for the reasons best known to her and she has not received the notice. It is also to be noted that, between 03.08.2021 to 06.08.2021, even though the petitioner has claimed that she was not in station, she did attend the Panchayat Union Council meeting on 05.08.2021 at Kodumudi. Therefore, her presence is very well ensured on 05.08.2021. Despite the said fact, she has not chosen to receive the notice which has come to her place everyday and returned back to redeliver the same till she received the same on 07.08.2021.

30. Therefore, the said ground raised by the petitioner that, there was no 7 days clear notice as contemplated under Section 212(7) is untenable in view of the fact which has been recorded above and on that ground, the petitioner cannot successfully challenge the impugned resolution.



31. Hence, the said reason stated by the petitioner's side did not stand in the way of proceeding with the meeting to be conducted on 13.08.2021 and accordingly on that date, the meeting was conducted, where not only the other members, but also the petitioner did attend the meeting, where, by unanimity, except the petitioner, the resolution of no-confidence motion against the petitioner was passed and accepted by the Council and the petitioner, though did attend the meeting, walked out of the meeting knowing well about the result of the no-confidence motion.

32. Therefore, the no-confidence motion which was passed on 13.08.2021 was passed by following the procedure contemplated under various sub-sections of Section 212 of the Act. Therefore, in this regard, it cannot be stated that there has been violation of the procedure contemplated under the said Section.

33. When that being so, the petitioner cannot have any sustainable ground to challenge the impugned resolution passed by the Panchayat Union Council in its meeting dated 13.08.2021, whereby the no-confidence motion since has been accepted by the Council, the petitioner has to lose her position as Vice Chairman and therefore, this Court has no hesitation to hold that, the impugned resolution can very well be sustained and further follow up action can be taken by the respondents pursuant to the impugned resolution.

34. In the result, the writ petition fails and hence it is liable to be dismissed. Accordingly, it is dismissed. No costs. Since the writ petition is dismissed, the order of interim stay granted in W.M.P.No.18558 of 2021 is vacated and the said miscellaneous petition is also dismissed. W.M.P.No.24026 of 2021 filed by the fourth respondent to vacate the interim stay is allowed. Consequently, connected W.M.P.Nos.18555 and 18556 of 2021 are also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Divisional Executive Magistrate-cum-
Revenue Divisional Officer, Erode Division,
Erode.

2.The Block Development Officer
Kodumudi Panchayat Union, Kodumudi-638 151
Erode District.

3.The District Collector / Inspector of Panchayat
Erode District, Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.No.68737
+1cc to the Government Pleader SR.No.68687

W.P.No. 17475 of 2021

MT(CO)
GN(22/02/2022)