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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. NO.26587 OF 2021 AND
W.M.P.NOS.28044, 28045, 28046 & 29059 OF 2021

K.Jaganathan

... Petitioner

Vs

1. The State of Tamil Nadu represented by
its Secretary to Government,
Rural Development Department,
Fort St. George, Chennai.
2. The Director of Rural Development and
Panchayat Raj,
Panagal Building, Saidapet,
Chennai.
3. The District Collector,
Collectorate Buildings, Salem.
4. The Revenue Divisional Officer,
Salem, Suramangalam,
Salem District.

... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the proceeding Mandhanam Na.Ka.No.2773/2021/A2 dated 29.11.2021 on the file of the 4th respondent and quash the same as illegal, incompetent and ultra vires.

For Petitioner : Mr.N.R.Chandran
Senior Counsel
assisted by Mr.R.Kannan

For Respondents : Mr.V.Yamuna Devi
Special Government Pleader



O R D E R

The prayer sought for herein is for a writ of certiorari to call for the records pertaining to the proceeding Mandhanam Na.Ka.No.2773/2021/ A2 dated 29.11.2021 on the file of the 4th respondent and quash the same.

2. In respect of Panamarathupatti Panchayat Union Council, election was conducted on 20.12.2020 to elect 13 ward members, out of whom, the petitioner was elected as one of the Ward Council Member from the 10th ward.

3. Thereafter, election was conducted on 11.01.2020 to elect the Chairman of the Panchayat Union Council among the elected ward members, wherein the petitioner was elected as Chairman of the Panchayat Union Council by getting a majority votes from the electoral college i.e., the elected ward members, accordingly, he has been serving as a Chairman of the Panchayat Union concerned.

4. When that being so, according to the petitioner, a notice has been received by the petitioner on 18.11.2021 in proceedings Na.Ka. No.2773/2021/A2, under which, the 4th respondent i.e. the Revenue Divisional Officer, who is empowered under the provisions of Section 212 of the Tamil Nadu Panchayats Act, 1994 (in short "the Act") has issued the said notice stating that, some members of the Panchayat Union Council had given notice expressing No Confidence against the petitioner along with the statement of charges and therefore, in respect of that statement of charges with notice for No Confidence Motion, the petitioner was directed to give his reply within one week period as contemplated under Section 212 of the Act.

5. On receipt of the said notice dated 18.11.2021, the petitioner had given reply for the alleged charges made against the petitioner. Thereafter, the 4th respondent issued another notice dated 29.11.2021 fixing a date for the Council meeting on 20.12.2021 at 11 a.m. to take up the No Confidence Motion against the petitioner and to decide the same, accordingly, the petitioner was directed to attend the meeting.

6. Challenging the said communication dated 29.11.2021 fixing the meeting on 20.12.2021 to take up the No Confidence Motion, the petitioner moved this writ petition with the aforesaid prayer.

7. At the time of admission, it was submitted by the learned Senior Counsel Mr.N.R.Chandran assisted by the learned counsel



appearing for the petitioner on behalf of the petitioner that, along with 18.11.2021 notice only a notice of No Confidence Motion signed by 3 members, out of the 13 elected members of the Council and a statement of charges alone were served and if the notice for No Confidence Motion was given only by 3 out of 13 members, it does not meet the requirement of 3/5th of the sanctioned strength of the Union Council as contemplated under sub-section (2) of Section 212 of the Act. Therefore, on that ground the entire proceedings which culminated in the impugned notice for conducting the meeting on 20.12.2021 to take up the No Confidence Motion is vitiated.

8.Considering the said prima facie case projected by the petitioner, this Court by order dated 14.12.2021 has passed the following order:

"Mrs.V.Yamuna Devi, learned Special Government Pleader takes notice for the respondents.

2. It is the case of the petitioner that, the petitioner is the elected Chairman of the Panchayat Union and against him, a no-confidence motion notice had been given by three out of thirteen members of the Union on 03.11.2021. Thereafter on 15.11.2021, a set of charges having been signed by eight out of thirteen members have been given to the respondent Revenue Divisional Officer, who, on receipt of the same, issued a notice on 18.11.2021 to the petitioner seeking explanation under Section 212(3) of the Tamil Nadu Panchayats Act, 1994 (In short 'the Act'). In response to the same, the petitioner has given a detailed reply on 25.11.2021. Despite the same, now the impugned notice has been issued under Section 212 (4) of the Act, whereby a meeting has been proposed to be conducted on 20.12.2021 to deliberate and decide the no-confidence motion against the petitioner. Challenging the same, the present writ petition has been filed.

3. Heard Mr.N.R.Chandran, learned Senior Counsel appearing on behalf of the petitioner, who raised two issues. Firstly he said that, as per the procedure contemplated under Section 212 of the Act, especially under sub-section(2) Written notice of intention to make the motion, signed by members of the Panchayat Union Council, together with a copy of the motion which is proposed to be made and a written statement of the charges shall be delivered in person to the Revenue Divisional Officer.



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4. Here in the case in hand, a copy of the no-confidence motion dated 22.10.2021 had been signed by three out of thirteen members and it was given to the Revenue Divisional Officer on 03.11.2021. Subsequently, the person who receives the same signed it on 03.11.2021. Thereafter, a copy of the charges signed by eight out of thirteen members of the Panchayat Union was received and initialled by the officer concerned of the Revenue Divisional Office on 15.11.2021. Therefore, the learned Senior Counsel would invite the attention of this Court as to the mandate given under Section 212(2), where all the three ie., notice of intention to make the motion, copy of the motion proposed to be made and a written statement of the charges together with a copy of the motion which is proposed to be made, shall be delivered in person to the Revenue Divisional Officer at once. Here in the case in hand, this has not been done. Therefore, it is a statutory violation especially in the context of Section 212(2) of the Act.

5. Learned Senior Counsel for the petitioner also invited the attention of this Court to the provisions of Section 207 of the Act, where a different procedure has been contemplated for removal of the Chairman of Panchayat Union. Therefore, in the present context, the present move made by the respondent Revenue Divisional Officer to issue a notice which is impugned herein to have the meeting on 20.12.2021 for consideration of the no-confidence motion given by some members of the Panchayat Union Council is not in consonance with the mandatory requirement under the provisions of Section 212 of the Act. Therefore, the learned Senior Counsel seeks the indulgence of this Court to interfere with the impugned notice.

6. Heard Mrs.V.Yamuna Devi, learned Special Government Pleader, who would submit that, the motion as per Section 212(2) of the Act has to be signed by not less than two members, whereas three members have signed the notice dated 22.10.2021 and subsequently the copy of the charges, which had been given along with the said notice was signed by eight out of thirteen members. Therefore, it satisfies the requirement under Section 212(2) and therefore there is no infirmity in the procedure adopted by the respondent Revenue Divisional Officer in summoning the meeting by giving the notice, which does not warrant any interference from this Court.



7. I have considered the preliminary submissions made by the learned Senior Counsel as well as the learned Special Government Pleader.

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8. As has been rightly pointed out by the learned Senior Counsel for the petitioner, insofar as the procedure to be adopted for moving a no-confidence motion against the elected Chairman or Vice Chairman of the Panchayat Union Council is concerned, Section 212(2) makes it very clear that, a motion expressing want of confidence in the Chairman / Vice Chairman of the Panchayat Union Council shall be made in accordance with the procedure laid down herein ie., the remaining sub-sections of 212.

9. In sub-section (2) it has been made clear that, the written notice of intention to make a motion signed by not less than 3 out of five members of the sanctioned strength of the Panchayat Council together with a copy of the motion and written statement of the charges against the Chairman / Vice Chairman shall be delivered in person to the Revenue Divisional Officer by any two of the members of the Panchayat Union Council signing the motion.

10. Here in the case in hand, the no-confidence motion or notice of intention to make no-confidence motion, even though was signed by three persons, the same is dated 22.10.2021, whereas it was received by the Revenue Divisional Office only on 03.11.2021.

11. Whereas the set of charges which is otherwise ought to have been delivered together with the notice of no-confidence motion signed by eight out of thirteen members, had been received by the Revenue Divisional Office only on 15.11.2021 and this is evidenced by the signatures or initials made by the concerned officials of the Revenue Divisional Office in those two documents.

12. Therefore, it has become clear that, on the date of delivering the notice of no-confidence motion, either on 22.10.2021 or 03.11.2021, there has been no written statement of charges signed by the members and moreover the written notice of intention to make the motion should have been signed by not less than 3/5th members of the sanctioned strength, whereas admittedly it was signed by only three members.



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13. Hence, this Court has no hesitation to hold that, the provisions of Section 212(2) of the Act has been violated in filing the no-confidence motion as well as the written statement, which has been separately made to the Revenue Divisional Officer. Therefore, based on the same, the Revenue Divisional Officer ought not to have issued the impugned notice invoking sub-section (4) of Section 212.

14. In view of this prima facie case, there shall be an order of interim stay against the impugned order. Post the matter after four weeks."

9. However, subsequently to vacate the said order, a vacate stay petition has been filed by the respondents, especially the 4th respondent in W.M.P.No.29059 of 2021. In view of the said vacate stay petition having been filed, at the request of the respondents, this writ petition is taken up for hearing today.

10. The learned Senior Counsel assisted by Mr.R.Kannan, learned counsel appearing for the petitioner has reiterated what have been stated by them in the earlier hearing and they asserted that, along with the notice dated 18.11.2021, only notice for No Confidence Motion given by 3 members of 13 sanctioned strength of the Panchayat Union Council and the statement of charges alone had been served and if it is a notice for No Confidence Motion signed by only 3 members, it does not meet the requirement of sub-section (2) of Section 212 of the Act. Therefore, the impugned notice fixing the meeting to be held on 20.12.2021, as has been stayed by this Court, is to be quashed, he contended.

11. However, Mr.V.Yamuna Devi, learned Special Government Pleader appearing for the respondents having relied upon some of the documents and also relied upon the original file produced before this Court in this regard would contend that, no doubt, the 3 members of the 13 sanctioned strength had given a notice for No Confidence Motion dated 22.10.2021 to the office of the 4th respondent and since the said notice does not meet the requirement of 3/5th of the total members which is mandatory, the same was rejected by the 4th respondent in the said motion notice itself on 03.11.2021.

12. Thereafter, 8 out of 13 members have given notice for No Confidence Motion on 15.11.2021 along with the copy of the charges which in fact had already been given.

13. The said notice for No Confidence Motion along with the statement of charges dated 15.11.2021 having been considered by the 4th respondent, he decided to proceed further in accordance



with the procedure established under Section 212 of the Act.

14. Accordingly, on 18.11.2021 a notice has been issued to the petitioner under sub-section (3) of Section 212 requiring the petitioner to give a reply to the show cause within 7 days.

15. In this context, it is the vehement contention of the learned Special Government Pleader that, along with the notice dated 18.11.2021, the notice of No Confidence Motion given by 8 members dated 15.11.2021 had been annexed and to establish the said fact in the very reference column itself in the notice dated 18.11.2021, it has been mentioned that the 15.11.2021 petition i.e. notice for No Confidence Motion given by the 8 members have been annexed.

16. Therefore, by relying upon this communication dated 18.11.2021, the learned Special Government Pleader would contend that, 15.11.2021 notice given by 8 members to the Revenue Divisional Officer since had been annexed along with the 18.11.2021 notice, the plea now raised by the petitioner is untenable.

17. Moreover, the learned Special Government Pleader would further submit that, in response to the 18.11.2021 notice in fact the petitioner has chosen to give reply for each of the charges levelled against him wherein he has not taken any defence to state that, along with 18.11.2021 notice, the notice for No Confidence Motion given by 8 members dated 15.11.2021 has not been annexed. Therefore, it goes without saying that, the notice dated 18.11.2021 carries the 15.11.2021 notice of No Confidence Motion along with the statement of charges. Therefore, the procedure contemplated under sub-section (2) and (3) of Section 212 of the Act, since has been complied with, the ground urged by the petitioner is totally unjustifiable and untenable. Therefore, on that ground, no indulgence can be shown against the move made by the 4th respondent to proceed with the No Confidence Motion proceedings, for which, the meeting was already fixed on 20.12.2021.

18. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

19. After having gone through the materials placed before this Court and having heard the submissions made by the learned counsel appearing for both sides, this Court finds that, the controversy arises in this writ petition is in very narrow compass.



20. The petitioner has accepted the receipt of notice dated 18.11.2021. Therefore, there can be no controversy on that aspect. However, the controversy arises, where, along with 18.11.2021 notice, it is the case of the petitioner that, only the 22.10.2021 notice which was received by the Revenue Divisional Office on 03.11.2021 alone was annexed along with the statement of charges, but not the notice of 8 members signed dated 15.11.2021.

21. In this regard, though it was vehemently contended on the part of the respondents by the learned Special Government Pleader that, the 15.11.2021 notice of No Confidence Motion signed by 8 members have been annexed along with the notice dated 18.11.2021, it is oath against the oath. Since the provision under Section 212 of the Tamil Nadu Panchayats Act has to be strictly followed because an elected representative of the people is to be removed from the post such a procedure contemplated under Section 212 of the Act has to be strictly complied with.

22. When that being the position, in sub-section (3) of Section 212, it has been mandated that, a copy of the statement of charges along with the motion shall be caused to be delivered to the concerned Chairman or the Vice Chairman by the Revenue Divisional Officer and the Chairman or the Vice Chairman shall be required to give a statement in reply to the charges within a week of the receipt of the motion.

23. Therefore, as per the said mandatory requirement under sub-section (3) of Section 212, a statement of charges along with the motion shall be caused to be delivered to the Chairman or Vice Chairman as the case may be.

24. Here since it is the case of the petitioner that, along with the notice dated 18.11.2021 only the 3 members notice dated 22.10.2021 has been served. In order to substantiate this contention, the petitioner has filed the said document in his typed set of papers which shows that the said document signed by 3 members dated 22.10.2021 is having the seal of the 4th respondent office dated 12.11.2021.

25. Whereas it is the stand of the respondents that, 22.10.2021 notice signed by 3 persons given to the 4th respondent office was rejected on 03.11.2021.

26. Had it been rejected on 03.11.2021, on what reason the official seal of the 4th respondent is carried in the said communication, is not known to this Court.



27. Be that as it may, now on 15.11.2021, 8 out of 13 members have given the notice signed by them and that is available in the original file and a copy of the same also has been filed in the typed set of papers by the respondents.

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28. Based on this 15.11.2021 notice and the statement of charges, the 4th respondent can very well proceed further as contemplated under Section 212 of the Act and accordingly, a fresh notice along with 15.11.2021 notice for No Confidence Motion given by 8 members and a statement of charges once again be served on the petitioner under sub-section (3) of Section 212 requiring him to give reply within 7 days time and thereafter, as contemplated under the other sub-sections of Section 212, it is open to the 4th respondent to proceed to fix a meeting to transact the business with regard to the No Confidence Motion.

29. For such a course of action to be undertaken by the 4th respondent, there is absolutely no impediment under law especially in the context of Section 212 of the Act.

30. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned communication dated 29.11.2021, for the aforesaid reasons and discussions, is hereby quashed.

(ii) As a sequel, it is open to the 4th respondent to issue a fresh notice under sub-section (3) of Section 212 of the Act along with the copy of the proposed resolution/ notice for No Confidence signed by 8 Council members of the Panchayat Union Council dated 15.11.2021 and also the copy of the charges be served on the petitioner through registered post with acknowledgment due requiring him to give reply for such notice within a period of 7 days.

(iii) Thereafter, with or without the reply of the petitioner, a further notice fixing a date for meeting can be issued by the 4th respondent to take up for consideration of the proposed No Confidence Motion. On that meeting, it shall be transacted and decided depending upon the majority being mustered by both sides. This is what exactly since has been contemplated under Section 212, referred to above, the said procedure can be followed in accordance with the said provision.



31. With these observations and directions, this Writ Petition is disposed of accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1. Secretary to Government,
The State of Tamil Nadu
Rural Development Department,
Fort St. George, Chennai.
2. The Director of Rural Development and
Panchayat Raj,
Panagal Building, Saidapet,
Chennai.
3. The District Collector,
Collectorate Buildings, Salem.
4. The Revenue Divisional Officer,
Salem, Suramangalam,
Salem District.
5. The Government Pleader,
High Court, Madras.

+1cc to Mr.R.Kannan, Advocate, S.R.No.69211
+1cc to Government Pleader, SR.NO.69765(29/12/2021)

W.P. No.26587 of 2021

NMI (CO)
PM/27/12/2021