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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.705 of 2022

and

W.M.P.Nos.762 and 764 of 2022

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,
Collectrate Buildings,
Salem.

4. The Revenue Divisional Officer,
Salem, Suramangalam,
Salem District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the proceeding Na.Ka.No.2773/2021/A3 dated 04.01.2022 on the file of the 4th respondent and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.N.R.Chandran

Senior Counsel
for Mr.R.Kannan.

For Respondents : Mr.J.Ravindran

Additional Advocate General
Assisted by Mrs.V.Yamuna Devi
Special Government Pleader





contemplated under Section 212, referred to above, the said procedure can be followed in accordance with the said provision."

4. Pursuant to the orders passed by this Court, the 4th respondent sought for explanations from the petitioner in respect of the allegations against him. The petitioner also submitted his detailed explanations vide letter dated 28.12.2021. Thereafter, the impugned notice dated 04.01.2022 was issued informing the petitioner that the meeting is scheduled to be conducted on 21.01.2022 at 11 A.M.

5. Mr.N.R.Chandran, learned Senior counsel appearing on behalf of the petitioner strenuously contended that the impugned notice is untenable and the No Confidence Motion moved based on certain allegations are politically motivated. Therefore, convening a meeting itself is unwarranted.

6. The learned senior counsel referred to Section 207 of the Tamil Nadu Panchayat Act, 1994, and contended that the case of the petitioner would not fall under Section 212 of the Act. Therefore, the procedures contemplated under Section 207 has to be conducted and in such circumstances if the allegations are found to be flimsy and without any material, the Government would be in a position to drop the allegations against the petitioner. Thus, Section 207 is more appropriate in the case of the petitioner than issuing the notice under Section 212 of the Act.

7. The learned senior counsel is of an opinion that such motivated no confidence motion can never be allowed to move against the person who is democratically elected. Therefore, an opportunity of conducting enquiry must be provided to the petitioner with reference to Section 207 of the Act.

8. The learned senior counsel drew the attention of the Court with reference to the orders passed by this Court in the earlier Writ Petition in W.P.No.26587 of 2021 and said that the earlier notice was quashed by this Court. Therefore, fresh notice issued by the 4th respondent by taking undue advantage of the liberty granted by this Court cannot be appreciated.

9. Mr.J.Ravindran, learned Additional Advocate General, objected the contentions raised on behalf of the writ petitioner by stating that Section 207 of the Act has no applicability with reference to the case on hand. Section 212 is the provision which is applicable and even in the earlier Writ Petition, the petitioner has contended that the procedures contemplated under Section 212 has to be followed in the case of the petitioner. Thus, now the petitioner cannot turn around and make submission



that Section 207 would be applicable in the present case.

10. The learned Additional Advocate General reiterated by stating that the petitioner is frequently filing Writ Petitions one after another at every stage only to protract proceedings and to stall No Confidence Motion, so as to escape from the clutches of the proceedings, instead of facing the proceedings on merits. Such action should not be appreciated by this Court.

11. It is contended that the respondents have scrupulously followed the procedures contemplated under Section 212 of the Act and opportunity was already provided to the writ petitioner who in turn availed opportunity and submitted his explanations. Once the petitioner subjected himself to the jurisdiction of the authorities in respect of the actions initiated based on the No Confidence Motion, now he cannot challenge the notice informing the petitioner regarding the place and time of the meeting to be convened. Thus, the Writ Petition has to be rejected.

12. Heard the arguments advanced by the learned senior counsel for the petitioner and the learned Additional Advocate General for the respondents.

13. The earlier round of litigation would reveal that the petitioner placed his reliance on Section 212 of the Tamil Nadu Panchayat Act. The Court considered the arguments made therein and quashed the notice on the ground of violations of procedures and thereafter granted liberty to the 4th respondent to issue fresh notice under Section 212 (3) of the Act along with 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. Further, directions are given that, on receipt of the reply from the petitioner or if there is no reply, the No Confidence Motion has to be taken for consideration.

14. When such liberty was granted by this Court to the 4th respondent, the 4th respondent issued notice seeking explanations from the petitioner and the copy of the charges were also enclosed. The petitioner submitted his detailed explanations in respect of the allegations set out against him. Thereafter, the 4th respondent issued the impugned notice dated 04.01.2022 fixing date and time for convening the meeting for No Confidence Motion moved against the petitioner.

15. With reference to the arguments advanced on behalf of the petitioner that Section 207 of the Act has to be applied, this Court is of the opinion that Section 207 stipulates removal



of Chairman of panchayat union council. Removal of Chairman proceedings may be initiated if the Government of their own motion or on a representation in writing signed by not less than two-thirds of the strength of the Panchayat Union Council. However, in the present case no such removal proceedings are initiated against the petitioner, right from the beginning, even during the earlier writ petition.

16. It is an admitted fact that the No Confidence Motion was moved against the petitioner. When the No Confidence Motion is moved against the petitioner, Section 212 would be applicable and the procedures contemplated under Section 212 has to be followed by the authorities for considering the No Confidence Motion.

17. Section 212 (3) stipulates that a copy of the statement of charges along with the motion shall be caused to be delivered to the concerned Chairman or Vice-Chairman by the Revenue Divisional Officer and the Chairman or Vice-Chairman shall be required to give a statement in reply to the charges within a week of the receipt of the motion by the Chairman or Vice-Chairman. The other proceedings contemplated would unambiguously portrays that the Revenue Divisional Officer who preside over the meeting has to follow the proceedings as contemplated under the provisions of the Act and Rules. As far as the impugned notice is concerned, it was issued under Section 212 (3) of the Act and therefore the notice impugned has to be decided with reference to Section 212 (3) of the Act.

18. The notice reveals that the No Confidence Motion petition was communicated to the petitioner and that an explanation was called for. The writ petitioner has also submitted his detailed explanations to the charges and thereafter, the 4th respondent fixed the date and time for convening meeting to consider the No Confidence Motion application. Thus, this Court do not find any infirmity or perversity in respect of the notice, which was issued in consonance with the provisions of the Section 212 (3) of the Tamil Nadu Panchayat Act, 1994 .

19. The learned Additional Advocate General raised a point that the notice impugned was issued on 04.01.2022 fixing the date of the meeting as 21.01.2022. However, the petitioner moved the present writ petition at the last moment i.e., one day prior to the meeting which would cause pressure on the respondents. Further, in the event of entertaining such writ petitions at the last moment, the same would cause prejudice to the interest of the other parties who may not get fair opportunity to defend their case.



20. The learned senior counsel for the petitioner made a submission that the impugned notice was received by the petitioner belatedly and therefore, he could not able to approach the Court by filing the present writ petition.

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21. However, the learned Additional Advocate General submitted the files which would reveal that the petitioner had received the copy of the impugned notice on 05.01.2022 at 05:35 pm. The petitioner has made his signature and acknowledged the receipt of the impugned notice. Therefore, the said contention of the petitioner is incorrect.

22. No doubt, the rights of the parties to move the Court can never be thwarted by the High Court. The right to move the Writ Petition under Article 226 of the Constitution of India is made available to every citizen. However, the Courts must ensure that when such Writ Petitions are moved belatedly despite the fact that there is an ample time available to move the same in advance, the likelihood of prejudice to either of the parties has to be considered by the Court.

23. There is a growing trend of moving the writ petitions at last moment for the purpose of securing interim order. Thereafter, it takes several years for disposal of the case. Many such writ petitions are pending before the High Court and the decision in most such occasion has greatly prejudiced either of the parties. Even this Court has dealt with number of cases where interim orders are obtained and the writ petitions are pending for long years.

24. Therefore, when the litigants approach the Court of law, his conduct and intention to move the Writ petition at the last moment has to be considered by the High Court for the purpose of considering the application for grant of interim orders. Taking undue advantage of the over burden of the High Court, parties can never be allowed to abuse the process of law. At the last moment they urge the Court based on one or the other point and get an interim order. Thereafter, the Writ Petition is kept pending for several years.

25. Thus, the contention raised in this regard is certainly an issue to be considered by the High Court, especially for the purpose of grant of interim orders.

26. In the present case, the petitioner has challenged only the notice. A question arises, whether the writ petition is entertainable under Article 226 of the constitution of India against the notice or not?



27. No writ petition needs to be entertained in a routine manner. The notice issued fixing date and time for convening the meeting has to be considered as an information which would not provide cause in normal circumstances. Only when the notice is issued by the authorities having no jurisdiction, the Writ Petition can be entertained, but not otherwise.

28. In the present case, there is a possibility of taking decision in either way during the course of the meeting scheduled to be conducted on 21.01.2022. Thus, the writ petition is not only premature but the petitioner is not able to establish any case for moving such writ petition challenging the impugned notice issued informing the date and time of the meeting scheduled to be held for the purpose of considering the application for No Confidence Motion.

29. In view of the facts and circumstances as discussed above, this court do not find any acceptable grounds for the purpose of interfering with the impugned notice. As the meeting is scheduled to be held tomorrow i.e., on 21.01.2022 at 11:00 am, the petitioner is at liberty to participate in the meeting.

30. With these observations the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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,
Collectrate Buildings,
Salem.



4. The Revenue Divisional Officer,
Salem, Suramangalam,
Salem District.

+1 cc to Government Pleader Sr.NO.3714
+1 cc to Mr.R.Kannan, Advocate Sr.NO. 3610

W.P.No.705 of 2022

pl(CO)
A.SK(04.02.2022)