

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.3450 of 2022
and
W.M.P.No.3561 of 2022

M.Jeganathan

...Petitioner

Vs.

1.The District Collector,
Kanchipuram District.

2.The Block Development Officer,
Kundrathur Panchayat Union,
Padapai, Kanchipuram District.

3.Ko.Padmanaban,
President, Malaipattu Village Panchayat,
Malaipattu, Kundrathur Taluk,
Kanchipuram District - 601 301.

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned order dated 13.01.2022 issued by the 3rd respondent herein and quash the same as being illegal, arbitrary, unconstitutional and consequently direct the 1st respondent to conduct enquiry upon the petitioner's appeal dated 21.01.2022 and take necessary action against the 3rd respondent for misusing and exercising his democratic post of Panchayat President in illegal and unlawful manner.

For Petitioner : Mr.T.Sundaravadanam

For Respondents : Mrs.C.Meera Arumugam
Special Government Pleader for R1
M/s.B.Thamil Nidhi
Special Government Pleader for R2
Mr.A.Nileshram for R3
for M/s.K.M.Vijayan

ORDER

After hearing the learned counsel for the petitioner and the learned counsel for the respondents and after perusing the impugned order this writ petition is being disposed of.

2.This writ petition has been filed to quash the impugned order dated 13.01.2022 issued by the 3rd respondent herein and to quash the same as being illegal, arbitrary, unconstitutional and consequently direct the 1st respondent to conduct enquiry upon the petitioner's appeal dated 21.01.2022 and take necessary action against the 3rd respondent for misusing and exercising his democratic post of Panchayat President in illegal and unlawful manner.

3.The case of the petitioner appears to be that the petitioner is running a chicken shop and that the 3rd respondent out of his ill-will has issued the impugned notice as the petitioner failed to support the 3rd respondent in the present Election. It is submitted that the impugned order sighting Covid and the alleged pollution caused by the outlet of the petitioner has directed it to be closed cannot be countenanced as powers are only vested with the Authorities under the provisions of the Tamil Nadu Panchayat Act, 1994.

4.In this connection, the learned counsel for the petitioner has drawn the attention to Section 155(1) of the said Act and section 225(5)(a) of the Act. It is further submitted that the petitioner has also sent a representation to the 1st respondent to take appropriate action against the 3rd respondent who is merely a elected member of the Village panchyat.

5.Mrs.C.Meera Arumugam, the learned Special Government Pleader appearing for the 1st respondent submits that the petitioner's representation dated 21.01.2022 will be considered and disposed on merits and in accordance with law.

6.Opposing the prayer, the learned counsel for the 3rd respondent submits that the activity undertaken by the petitioner is causing public nuisance and there is a risk caused to the general public at large. That apart, it is submitted that the petitioner has not obtained any license from the authority and therefore the impugned order cannot be disturbed.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents and perused the impugned order and the counter affidavit filed on behalf of the 2nd respondent.

8.In this case the petitioner has not obtained any license. On the other hand, the petitioner appears to have paid charges for obtaining the license to the 3rd respondent. However, the 3rd respondent has not given any lincese to the petitioner. The petitioner appears to have paid the renewal charges and no separate license has been issued since 2018.

9.As per Section 220(4) the acceptance of the pre-payment of the fee for any license or permission shall not entitle the person making such pre-payment to the license or permission. Such a person is only entitled to a refund of the fee in case of refusal of the license or permission. There are no records to substantiate that the application which appears to have been filed for which the petitioner has been paid fees for renewal has been rejected. On the other hand, periodically the amount has been collected by the 3rd respondent.

10.As per section 255(5)(a) of the aforesaid Act, the executive authority of the village panchayat or the commissioner or the chief executive officer may by notice require the person so doing such act to alter, remove, or as far as practicable restore to its original state, the whole, or any part of any property, movable or immovable, public or private affected thereby, within a time to be specified in the notice; and further.

11.In this case the petitioner has not been given a license. However though the petitioner has been paying the charges to the 3rd respondent. The petitioner has been doing his business right from 2018. Thus, there is no justification in the impugned proceedings.

12.Considering the above, I am inclined to dispose this writ petition by quashing the impugned order dated 13.01.2022 by directing the 3rd respondent to issue license strictly in accordance with the provisions of the aforesaid Act, if the petitioner is otherwise qualified for such license. The above exercise shall be carried out by the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order. In case, the license is rejected by the 3rd respondent, it is open for the petitioner to work out his remedy in accordance with law. In case there was any deviations by the 3rd respondent in issuing the impugned order, the 1st respondent shall also consider the representation of the petitioner dated 21.01.2022 to take action against the 3rd respondent. The impugned order dated 13.01.2022 thus stands quashed.

13.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

- 1.The District Collector,
Kanchipuram District.
- 2.The Block Development Officer,
Kundrathur Panchayat Union,
Padapai, Kanchipuram District.
- 3.Ko.Padmanaban,
President, Malaipattu Village Panchayat,
Malaipattu, Kundrathur Taluk,
Kanchipuram District - 601 301.

+1cc to Mr.T.Sundaravadanam, Advocate Sr.No.35982

+1cc to Mr.K.M.Vijayan Associates, Advocate Sr.No.36277

+1cc to the Government Pleader Sr.No.37186

W.P.No.3450 of 2022
and
W.M.P.No.3561 of 2022

KV(CO)
RVM(28/07/2022)