



W.P.No.29193 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.29193 of 2022
and W.M.P.No.28487 of 2022

M.Arun
The President
Puttuthakku Panchayat
Puttuthakku Village
Wallajah Taluk
Ranipet 632 517

... Petitioner

Vs.

1.The Inspector of Panchayats / District Collector
Ranipet District
Ranipet 632 401

2.The Assistant Director (Panchayats)
Ranipet District
Ranipet 632 401

3.The Block Development Officer (VP)
Arcot Panchayat Union
Arcot Taluk
Ranipet 632 503

... Respondents



W.P.No.29193 of 2022

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 1st respondent pertaining to the proceedings in Na.Ka.A4/739/2022 dated 13.10.2022 and quash the same in so far as it directs the petitioner to repay a sum of Rs.3,53,262/- (Three lakhs fifty three thousands and two hundred and sixty two only).

For Petitioner : Mr.S.Kamadevan

For Respondents : Mrs.R.Anitha
Spl. Govt. Pleader for R1 & R2

Mr.M.Alagu Gowtham for R3

ORDER

The Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 1st respondent pertaining to the proceedings in Na.Ka.A4/739/2022 dated 13.10.2022 and quash the same in so far as it directs the petitioner to repay a sum of Rs.3,53,262/-.

2.The petitioner was elected as a President of Puttuthakku Village Panchayat. There are 9 panchayat members represented the Village panchayat. On the basis of some complaint given by some of the



W.P.No.29193 of 2022

panchayat members, the 2nd and 3rd respondents conducted enquiry on 08.06.2022 and directed to drop the further proceedings in the complaint.

However, suppressing the same, one of the ward members filed W.P.No.18109 of 2022 before this Court seeking for a direction, to direct the 1st respondent / Inspector of Panchayats to invoke power conferred upon him under Section 205 of the Village Panchayat Act, 1994 for his removal. This Court vide its order dated 18.07.2022 directed the 1st respondent to consider the representation within a period of twelve weeks. The 2nd respondent vide communication dated 18.05.2022 directed the 3rd respondent to conduct enquiry. After conducting enquiry, report was sent to the 2nd respondent on 08.06.2022. The report submitted by the 3rd respondent indicates that the entire allegations levelled against the petitioner have been dealt with elaborately and he recommended dropping of further action. When the matter stood thus, the 1st respondent passed an order directing the petitioner to repay the amount of Rs.3,53,262/- on the ground that the works have been allotted despite the stoppage order made by the Assistant Director. Therefore, the above



W.P.No.29193 of 2022

amount sought to be recovered from the petitioner. Hence, the impugned order has been put in challenge.

3.Learned counsel for the petitioner would submit that being the Panchayat President, works have been allotted and completed on 26.04.2022 and for which an amount of Rs.3,53,262/- has been paid. However, a show cause notice was issued later on 18.05.2022 and based on which the impugned order came to be passed.

4.It is the further contention of the learned counsel for the petitioner that absolutely there is no allegation against the petitioner for misappropriation of funds allotted to the work. Merely on the basis of some complaints from the opposite side members, Writ Petition came to be filed seeking a direction to consider the representation, the show cause notice came to be issued, which resulted in filing the present petition. Hence it is his contention that the impugned order cannot be sustained in the eye of law. The very impugned order itself clearly indicate that the work has been completed on 26.04.2022 and a sum of



W.P.No.29193 of 2022

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Rs.3,53,262/- has been spent for the allotted work. However, the impugned order has been passed as if the work has been continued contrary to the directions issued by the Assistant Director.

5.Mrs.R.Anitha, the learned Special Government Pleader takes notice for the respondents 1 and 2. The learned counsel submitted that, the order for recovery of amount has to be passed by the Assistant Director as per Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, whereas the impugned order has been passed by the appellate authority viz. the 1st respondent. Hence, submitted that the order may be set aside and the matter may be remanded back to the Assistant Director and he may issue a fresh show cause notice and proceed as per law.

6.As rightly stated by the learned counsel for the petitioner that the impugned order has been passed after the direction by this Court. One of the members filed W.P.No.18109 of 2022, wherein, this Court directed the 1st respondent to consider the representation of one of the Panchayat



W.P.No.29193 of 2022

WEB COPY

members and pass orders on merits. This order has been passed on 18.07.2022. Thereafter only the impugned order has been passed. It is relevant to note that the allegations made against the President of Panchayat that, he has allotted panchayat work without following proper Rules. Except that there is no other allegations whatsoever is made against the writ petitioner.

7.Originally, the show cause notice was issued only on 18.05.2022 by the Assistant Director alleging that works are allotted contrary to the Transparency of Tender Act. The allegations made in the show cause notice is with regard to some violations in the Rules in allotting the work.

8.It is not the case of respondents that there were misappropriation of funds or the funds never been utilized for the work. The show cause notice was issued on 18.05.2022 after the work has been completed. The work completed on 26.04.2022. Pursuant to the show cause notice, the impugned order came to be passed on the ground that despite the direction of stoppage of work, the work has been completed. The very



W.P.No.29193 of 2022

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reason for arriving such conclusion is in the view of this court indicates non application of mind for the simple reason that, the show cause notice was issued on 18.05.2022 but the work has been completed much prior to show cause notice viz. 26.04.2022. Therefore, the observation made by the 1st respondent in his order that the petitioner without following the direction of the 2nd respondent has completed the work exhibits clear non application of mind. Admittedly, the impugned order itself indicate that the work has been completed on 26.04.2022.

9. Such view of the matter, the impugned order is liable to be set aside. Though, it is the contention of the learned counsel for the respondent that the Assistant Director is the competent person under Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, to pass appropriate order, it is relevant to note that, to initiate proceeding under Rules referred above there must have been materials unearthed viz. auditing. Only on such materials, the further action automatically follow, under the above order. But, in the given case, no such misappropriation or misapplication of money found by the auditor



W.P.No.29193 of 2022

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for invoking the Rules referred above. Merely on the basis of complaint by some of the dissident members impugned order has been passed.

10. Such view of the matter, the impugned order is liable to be set aside. Accordingly, set aside. In the event, if any such misappropriation or misapplication is noted in the audit, the Assistant Director may proceed as per law after giving proper opportunity to the petitioner. The writ petition stands allowed and the impugned order is set aside. Consequently, the connected miscellaneous petition is closed. No costs.

08.12.2022

kas

Index : yes / no

Internet : yes / no

Speaking / Non speaking

To

1. The Inspector of Panchayats / District Collector
Ranipet District
Ranipet 632 401



W.P.No.29193 of 2022

2.The Assistant Director (Panchayats)

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3.The Block Development Officer (VP)

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W.P.No.29193 of 2022

N.SATHISH KUMAR, J.

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W.P.No.29193 of 2022

08.12.2022