



W.P(MD)No.7213 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7213 of 2010

and

MP(MD) Nos.1 & 2 of 2010

M.Mahendran

...Petitioner

Vs.

**1.Government of Tamilnadu,
Rep by its Principal Secretary,
Rural Development and Panchayat Raj
Department,
Fort St.George, Chennai.**

**2.District Collector cum
Inspector of Panchayats,
Thanjavur District,
Thanjavur.**

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the second respondent in Na.Ka.No.5582/2008/A3) No.V1(2)/153(d)/2010 dated 22.04.2010 published in Tamilnadu Government Gazette dated 26.04.2010 and quash the same.

For Petitioner : Mr.N.C.Ashok Kumar

**For Respondents : Mr.P.Thilak kumar
Government Pleader**

ORDER

This writ petition has been filed challenging the order, dated



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22.04.2010, passed by the District Collector/Inspector of Panchayat, Thanjavur, under Section 205 of Tamil Nadu Panchayat Act 1994, which was also published in the Tamil Nadu Government Gazette, dated 26.04.2010.

2.The petitioner was elected as the President of Mullangudi Village Panchayat, Mullangudi, Thiruvudaimaruthur, Thanjavur District in the year 2006. According to the petitioner, based on some false complaint given by the rival party, the second respondent, initiated proceedings under Section 205 of the Panchayat Act, 1994 and convened a meeting on 09.04.2009, wherein, all the members of the Council unanimously rejected the allegations as against the petitioner and accepted the petitioner's explanation. The Tahsildar, Thiruvudaimaruthur sent a report to the second respondent to that effect. However, the second respondent removed the petitioner from the post of President, even without giving any opportunity to him. Hence, the petitioner preferred Revision before the first respondent. By order dated 20.01.2010, the first respondent allowed the revision and set aside the notification, dated 15.07.2009. The District Collector/the Inspector of Village Panchayat, after issuing second show cause notice to the President on 10.02.2010,



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indicating the reasons for differing the views of the Village Panchayat, removed the petitioner by order, dated 22.04.2010 and the same was also published in the Tamil Nadu Government Gazatte on 24.06.2010, under Section (1) of the Act and the same are under challenge in this writ petition.

3.The learned counsel appearing for the petitioner submits that all the members have supported the petitioner/ Panchayat President. However, without assigning any reasons for differing with the views of the Panchayat and even without affording an opportunity to the petitioner, the Inspector of Panchayat has proceeded with and also passed the impugned order of removing this petitioner from the post of President. On this ground, revision filed by the petitioner before the first respondent/Government was allowed and the matter was remanded back to the second respondent for taking action afresh, after issuing fresh show cause notice. However, the second respondent has passed the impugned order removing the petitioner from the post of Panchayat, under Section 205 of Tamil Nadu Panchayat Act, without stating any reasons for differing with the views of the members of the Panchayat.



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4.The learned counsel appearing for the petitioner has relied upon the orders of the Division Bench, in ***the State of Tamil Nadu, represented by the Secretary to Government and others Vs.S.Ramasamy***, reported in ***2011 (5) CTC 197***, wherein, the Honourable Division Bench has held as follows:-

“10.Section 205 of the Act is a very drastic provision intended to be exercised in very exceptional circumstances. Village Panchayat is constituted as local self-government to undertake welfare measures for the benefit of village people. This is part of decentralization of our administration. The development should benefit the common man living in villages. Administration of the panchayat is given to the representatives elected by the members of the respective panchayats in a democratic manner. Electorates have given mandate to the President and the members to continue in office for the full term. By removing the elected representatives on account of the alleged misconduct, the Inspector of Panchayat was practically interfering with the administration of local self Government. Therefore, action taken under this provision cannot be taken very lightly. It should be taken with all its seriousness. The action of the Inspector of Panchayat should not result in oppression.

11.In a democratic set up, will of the people is supreme. So long as the elected body enjoys the confidence of the



people, they should be permitted to continue in office. Section 205 of the Act gives a supervisory jurisdiction to the District Collector in his capacity as Inspector of Panchayat, over the democratically elected President and Vice President of the Village Panchayat. The statute permits the Inspector to take action on his own motion or at the instance of 2/3rd of the members of the Panchayat. Therefore, such absolute power should be exercised with utmost care and caution and not in a routine or casual manner.

Analysis :-

12.The subject action against the respondent was initiated suo motu. The members of the panchayat never expressed no-confidence against the President. As per the scheme of the Act, the District Collector was expected to issue show cause notice to the Panchayat President calling for his explanation. In case the explanation was found satisfactory, no further action is necessary. The proceeding would continue further only in the event of District Collector coming to a prima facie conclusion that the explanation is not satisfactory and that the views of the members of the Panchayat should be obtained.

13.The provision regarding recording the views of the village panchayat by convening the Panchayat meeting



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was made with a specific purpose. Sub sections 2 to 10 of Section 205 of the Act clearly gives an indication that due weight should be given to the views expressed by the village panchayat. In case the jurisdiction of the Collector is absolute, there is no necessity to ascertain the views of the members of village panchayat. They are the best persons to comment about the conduct or misconduct of the President of the village panchayat. Section 205(9) of the Act indicates that the village panchayat should be given a free hand in the matter of taking action against the President. It is only because of this, Tahsildar, was restrained from speaking on the merits of the notice or the explanation given to the charges. Therefore, the inevitable conclusion is that the Inspector has no authority to remove the President without considering the views expressed by the members of the Panchayat objectively”

5.Mr.P.Thilak kumar, learned Government Pleader appearing for the respondents submits that this petitioner, being the President of Mullangudi Village Panchayat, Thanjavur District has acted in a high handed manner, without consulting the Vice President and misappropriated a huge sum of Rs.13,41,202/- from the Village Panchayat funds, from 01.04.2008 to 30.11.2008, without maintaining



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any Vouchers, Estimates, Tender documents and Measurement Books in the Village Panchayat Accounts and also did not follow any of the Government instructions in the conduct of the Village Panchayat Administration. He further submits that the Vice President Mr.Balaguru and five other members of the Village Panchayat has submitted a petition to the second respondent on 25.08.2008 that the petitioner had misappropriated the Panchayat funds, without executing the basic amenities, like, water supply and street light facilities. Based on their complaint, the enquiry was conducted and the enquiry report reveals that the allegations levelled against the petitioners were true and therefore, the Inspector of Panchayat initiated action on his own motion for removal of the petitioner from the post of President, as contemplated under Section 205 (1) of Tamil Nadu Panchayat Act and issued notice on 21.01.2009, which was also served on the petitioner through Block Development Officer on 28.01.2009. The petitioner had also submitted his explanation, which was not acceptable and not satisfactory. Therefore, the Inspector of Panchayat proceeded with further under Section 205 of the Tamil Nadu Panchayats Act,1994. The Tahsildar, Thiruvidadimaruthur was directed to convene a meeting of all the members of the Panchayat to ascertain the view of the members of the



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Village Panchayat about the removal of the petitioner and the meeting was also convened on 09.04.2009, with clear notice to all the members of the Panchayat. The views of the members were also recorded and forwarded to the second respondent and the second respondent after perusal of the records and the views of the Panchayat members, proceeded further to remove the petitioner from the post of President and accordingly removed the petitioner from the post of President, under Section 205 of the Act, by order, dated 26.05.2009. The said order was challenged before the Principal Secretary/the first respondent and the first respondent by his order dated 16.11.2009, set aside the earlier orders of the District Collector and directed the second respondent to take further action as per the orders of this Court reported in 2009 (4) CTC 609. Therefore, the second respondent had issued the second show cause notice to the petitioner on 10.02.2010, indicating the reasons for differing the views of the Village Panchayat members. The petitioner also submitted his explanation on 26.02.2010. The Inspector of Panchayat satisfied with the reasons and the materials available, has taken a decision for removing this petitioner from the post of Panchayat President that this petitioner has misappropriated a sum of Rs.13,41,202/- from the village Panchayat funds, without maintaining any vouchers and



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records. The learned Government Pleader has tabulated the manner of misappropriation committed by this petitioner and the same has been extracted as under:-

- ◆ The petitioner had misappropriated a sum of Rs. 5,80,561/-from the Village Panchayat Account by way of alleged payment for Roads Culverts and retaining wall work without preparing proper estimates and recording the work in Measurement Books. On verification, it was found that the petitioner had failed to follow the tender procedures laid down in the G.O. (Ms) No.286, Rural Development (CSS-I) Department, Dated 31.12.1998. The measurements and Check Measurements were also not made by the competent authorities as required under the above said Government order.
- ◆ The petitioner had misappropriated a sum of Rs. 4,00,000/-from the Village Panchayat Account towards alleged payment of construction of Community Hall without obtaining the administrative sanction form the District Collector and without preparing estimates and recording in the Measurement Books which are required as per the instructions laid down in G.O.(Ms) No.203, Rural Development & Panchayat Raj Department, dated 20.12.2007.



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- ◆ The petitioner had misappropriated a sum of Rs. 80,678/- from the Village Panchayat Account towards alleged maintenance of Street lights by means of self cheque instead of giving third party cheque to the company concerned for the alleged purchase of street light materials.
- ◆ The petitioner had misappropriated a sum of Rs. 68,013/- from the Village Panchayat Account, towards the alleged maintenance works of Over Head Tanks without any sub-vouchers and contract Certificate bill form.
- ◆ The petitioner had made excess expenditure of Rs. 1,4,25/- from the Village Panchayat Account in the Voucher No.97, dated 03.12.2008 towards the payment of extension of pipe line.
- ◆ The petitioner had misappropriated a sum of Rs. 99,530/- from the Village Panchayat Account, towards alleged erection of hand pumps without any sub vouchers and contract certificate bill form.
- ◆ The petitioner had misappropriated a sum of Rs.1,10,995/- from the Village Panchayat Account without any sub-vouchers.



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6.This Court considered the rival submissions made and also perused the materials placed on record.

7.This writ petition is filed challenging the order of removal of the petitioner as President of Panchayat by the Inspector of Panchayat under Section 205 of Tamil Nadu Panchayat Act, 1994. The grievance of the petitioner is that the second respondent has not followed the due process of law, as contemplated under Section 205 of the Act and has not considered the stand taken by the Village Panchayat and has not assigned any reason for differing the views of the Panchayat members and without providing an opportunity to the petitioner, on his own views, taken a decision as against the views of the Panchayat and passed the impugned order.

8.The Inspector of Panchayat/the District Collector is vested with the powers of removing the elected Presidents as per Section 205 of the Tamil Nadu Panchayat Act. However, the same has to be done, by following due procedure, as contemplated under Section 205 of the Act, which reads as under:-



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205. Removal of President -

(1) The Inspector-

(a) of his own motion, or

(b) on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat,

is satisfied that the President wilfully omits or refuses to carry out or disobeys any provision of this Act, or any Rule, bye-law, Regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the President to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.”

9. In this case, the District Collector on receipt of the complaint from five members ordered for an enquiry, satisfied that there are *prima facie* materials as against this petitioner for misappropriation of funds, has initiated action on his own motion, as per Section 205(1) (A) of the Act, after calling upon an explanation from the petitioner and after his explanation ordered for a meeting through Tahsildar and the views of the Panchayat members were recorded and thereafter removed



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the petitioner from the post of President, by an earlier order dated 27.06.2009, which was challenged by the petitioner, under Section 205(12) of the Act, before the Panchayat Secretary, Rural Development Panchayat Raj Department. The first respondent by his order dated, 16.11.2009, set aside the earlier order, dated 27.06.2009, in accordance with the direction of the Full Bench in the judgment reported in (2009) (4) CTC 609, remanded the matter back to the District Collector. Thereafter, the second respondent issued a fresh show cause notice and recorded the views of other members of Panchayat and how he is differing with the views of the Panchayat and provided an opportunity to the petitioner and thereafter passed the present impugned order. The Inspector of Panchayat is entitled to differ with the views of the Panchayat, as per provision under Section 205(11) of the Act and his views were also recorded in the second show cause notice, for which, the petitioner has also replied on 10.02.2010. The petitioner is still had a remedy by filing an appeal as against the impugned order before the Secretary. However, the petitioner, without doing so, has preferred this writ petition before this Court.



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10.In view of the foregoing reasons, this Court finds that there is no error in the order passed by the second respondent and therefore this writ petition deserves to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.04.2022

Index:Yes
Internet:Yes
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To

1.The Principal Secretary,
Rural Development and Panchayat Raj
Department,
Fort St.George, Chennai.

2.The District Collector cum
Inspector of Panchayats,
Thanjavur District,
Thanjavur.



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B.PUGALENDHI, J.

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