



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.02.2022
DELIVERED ON : 02.03.2022
CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P. (MD)No.3387 of 2022

WEB COPY

and
W.M.P. (MD)Nos.2970, 2971 and 3157 of 2022

S.Chandra Santhosam

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat
Raj Department, Chennai.

2.The District Collector,
Office of the District Collectorate,
Kadamalaikundi Mayiladumparai
Panchayat Union, Theni District.

3.The Commissioner,
Kadamalaikundu Mayiladumparai
Panchayat Union, Theni District.

4.The Sub Collector,
Periyakulam, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned enquiry notice issued by the fourth respondent in his proceedings in Na.Ka.No.898/2022/A2 dated 07.02.2022 and the consequential notice issued by the fourth respondent in his proceedings in Na.Ka.No.898/2022/A2 dated 15.02.2022 and quash the same as illegal.

For Petitioner :Mrs.H.Jasima Yasmin
for M/s.Ajmal Associates

For Respondents :Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.M.Lingadurai
Special Government Pleader

Mr.D.Malaichamy for Impleading petition
(in WMP(MD).3157 of 2022)

**ORDER**

This Writ Petition has been filed challenging the impugned notices issued by the fourth respondent, dated 07.02.2022 and 15.02.2022.

WEB COPY

2.The issue involved in this Writ Petition is whether the procedure contemplated for removal of a Chairman of a Panchayat Union Council under Section 207 of the Tamil Nadu Panchayat Act, 1994 (hereinafter referred to as "the Act"), has been followed or not.

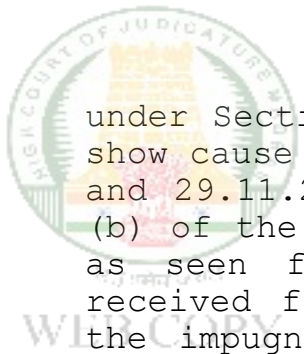
3.Under the impugned notices, dated 07.02.2022 and 15.02.2022, issued by the fourth respondent under Section 207(3) of the Act, the petitioner, who is the Chairman of Kadamalaikundu-Mayiladumparai Panchayat Union, Theni District, was called upon to appear for the meeting of the Panchayat Council scheduled to be held on 25.02.2022 at about 11.00 am in respect of the representation given by ten (10) Panchayat Union Councillors of Kadamalaikundu-Mayiladumparai Panchayat Union, out of the total strength of 14 Councillors for taking action against the petitioner and for her removal as Chairman of Kadamalaikundu-Mayiladumparai Panchayat Union under Section 207 of the Act.

4.The petitioner was elected as the Chairman of Kadamalaikundu-Mayiladumparai Panchayat Union. She belongs to AIADMK political party. According to the petitioner, after the DMK political party came into power, the Councillors belonging to DMK party started troubling her. According to the petitioner, a motion expressing want of confidence on the petitioner as Chairman of Kadamalaikundu-Mayiladumparai Panchayat Union was held on 23.07.2021. Since there was no quorum, as required under Section 212(3) of the Act, the fourth respondent dropped further proceedings against the petitioner by his order, dated 23.07.2021.

5.According to the petitioner, as per Section 212(4) of the Act, if the motion is not carried out for want of quorum, no notice of any subsequent motion shall be received until the expiry of one year. As the Councillors did not succeed in their attempt to carry out no confidence motion against the petitioner, they have again preferred a complaint against the petitioner. On receiving the said complaint, the fourth respondent issued the impugned notices, dated 07.02.2022 and 15.02.2022 for convening a meeting under Section 207 (3) of the Act, which according to the petitioner, is illegal as the fourth respondent has not followed the procedure contemplated under Section 207(1) and (2) of the Act.

6.It is the contention of the respondents that the Writ Petition is not maintainable on the following grounds:

(a)the impugned notices are challenged only on the ground that no show cause notice was issued to the petitioner as contemplated



under Section 207 (1)(b) of the Act. According to the respondents, show cause notices were issued by the first respondent on 09.11.2021 and 29.11.2021 to the petitioner in compliance with Section 207(1)(b) of the Act. But, the petitioner refused to receive the notices as seen from the returned covers. Since explanation was not received from the petitioner, despite opportunity granted to her, the impugned notices under Section 207(3) of the Act came to be issued calling upon the petitioner to appear before the third respondent office for convening a meeting with the Council Members of the third respondent Panchayat Union on 25.02.2022.

(b)The fourth respondent issued the impugned notices only on the order of the first respondent. Since no explanation was given by the petitioner, despite several opportunities, the impugned notices came to be passed under Section 207(3) of the Act. According to the respondents, as per the provisions contained under Section 207(1)(b) of the Act, a representation was signed by 10 out of 14 elected Council members of the third respondent Panchayat Union and two Council Members of the third respondent Panchayat Union, Mr.B.Prabhakar, Councillor, 9th Ward and Mr.M.Machakalai, Councillor, 6th Ward, had presented the complaint against the petitioner before the first respondent on 05.08.2021 in person and the same was forwarded to the second respondent by proceedings, dated 27.08.2021.

(c)Therefore, the show cause notice, dated 26.10.2021 issued to the petitioner by the Assistant Director of Panchayats, Theni District, on instruction from the second respondent, who was appointed by the Government in this behalf under Section 207(1)(b) of the Act to render her explanation on the complaint/representation alleged against her and the same is deemed to have been received by her on 26.10.2021. However, the petitioner has not come forward to render her explanation.

(d)In addition to the earlier show cause notice, dated 26.10.2021, two more show cause notices, dated 09.11.2021 and 29.11.2021 were issued to the petitioner in person and also sent through registered post with acknowledgement due to submit her explanation. But the petitioner wantonly refused to receive the notices.

(e)On 16.12.2021, the second respondent had sent a proceeding to the first respondent stating that the petitioner has refused to render her explanation and recommended the first respondent for taking necessary action against the petitioner under Section 207 of the Act. The first respondent had sent a reply, dated 02.02.2022 to the fourth respondent/Sub Collector, Periyakulam, under which, it was directed to conduct a proper enquiry and submit an enquiry report as soon as possible to the first respondent. Therefore, on the order issued by the first respondent only, the fourth respondent sent a notice to all the Council members of the third



respondent Panchayat Union vide notices, dated 07.02.2022 and 15.02.2022.

(f)The petitioner has suppressed all the aforementioned facts and has also suppressed the issuance of show cause notice prior to issuing the impugned notices under Section 207(3) of the Act convening a meeting as contemplated thereunder.

(g)According to the respondents, Section 207(1)(b) of the Act contemplates that on representation in writing sent by not less than 2/3rd strength of the Panchayat Union Councillors containing a statement of charges against a Chairman of the Panchayat Union Council and presented in person to any officer appointed by the Government in this behalf by any two members of the Panchayat Union Council are satisfied that the Chairman wilfully omits or refuses to carry out or disobeys the provisions of the Act, or any rules, by-laws, regulations or lawful orders issued thereunder or abuses the powers vested in him/her, the Government shall, by notice in writing, require the Chairman to offer within a specified date, his/her explanation with respect to his/her acts of omission or commission mentioned in the notice.

(h)It is clear that Officer appointed by the Government is competent to take action on the representation made by the Panchayat Union Councillors members. According to the respondents, only by the proceedings of the first respondent, the fourth respondent had initiated proceedings under Section 207 of the Act and acted accordingly. According to the respondents, there was no abuse of process of law or violation in conducting enquiry against the petitioner as alleged by her. It is their case that the provision of Section 207 of the Act relating to removal of Chairman of the Panchayat Union Council has been strictly followed and there is no illegality or violation as alleged by the petitioner.

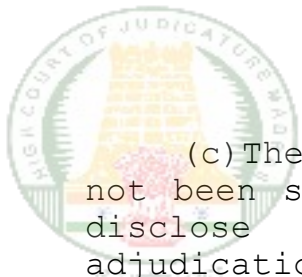
7.Heard Mrs.H.Jasima Yasmin, learned Counsel for the petitioner and Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents.

Submissions of the learned Counsels:

8.Mrs.Jasima Yasmin, learned Counsel for the petitioner submitted as follows:

(a)The impugned notices issued by the fourth respondent straightaway calling for a meeting under Section 207(3) of the Act, without following the procedure set out under Section 207(1) of the Act, is illegal;

(b)The first respondent ought to have required the petitioner to offer her explanation with respect to her alleged acts of omission or commission under Section 207(2) of the Act before convening a meeting under Section 207(3) of the Act;



(c)The alleged complaint preferred against the petitioner has not been served to her till date. The authorities have a duty to disclose the materials that has been relied upon at the adjudication. Hence, keeping a party bereft of the information that influenced the decision of an authority undermines the transparency. Hence, non issuance of show cause notice to the petitioner and non furnishing of the complaint alleged against her are utter violation of the established principles of natural justice.

(d)Mere complaint preferred against the Chairman would not entitle the Government to convene a meeting of the Councillors under Section 207(3) of the Act. The Government may issue a show cause notice, only if it is satisfied with the allegation preferred against the petitioner. However, the impugned notices have not been issued after the subjective satisfaction of the first respondent, as required under Section 207(1) of the Act; and

(e)In terms of Section 207 of the Act, the competent authority for initiation of action under Section 207 of the Act is only the State Government and therefore, the impugned notices issued by the fourth respondent cannot be sustained for want of jurisdiction. The said proposition of law has been laid down by this Court in the case of **Valarmathi Chidambaram vs the District Collector, Karur District and others**, reported in **2011 (1) CTC 385**. Section 207(1) of the Act not only prescribes the State Government as the competent authority, but also the manner in which the complaint can be taken note of. Therefore, the impugned notices are liable to be quashed.

9.Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents in support of the contention of the respondents, drew the attention of this Court to the following documents/orders:

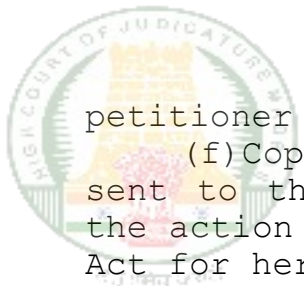
(a)Copy of the complaint/representation made by the Council Members, dated 05.08.2021;

(b)Copy of the letter issued by the first respondent to the second respondent, dated 27.08.2021, authorising the second respondent to take action against the petitioner based on the complaint given by the ten Councillors of the third respondent Panchayat Union.

(c)Copy of the show cause notice issued by the Assistant Director of Panchayats, Theni District, dated 26.10.2021 to the petitioner together with returned cover with an endorsement "refused".

(d)Copy of the show cause notice issued by the Assistant Director of Panchayats, Theni District, dated 09.11.2021, to the petitioner together with returned cover with an endorsement "refused".

(e)Copy of the show cause notice issued by the Assistant Director of Panchayats, Theni District, dated 29.11.2021 to the



petitioner together with returned cover and receipt;

(f) Copy of the proceedings passed by the second respondent and sent to the first respondent informing the first respondent about the action initiated against the petitioner under Section 207 of the Act for her removal;

(g) Copy of the letter, dated 02.02.2022 issued by the first respondent to the second respondent requesting the second respondent to take action against the petitioner as contemplated under Section 207 of the Act for her removal as Panchayat Union Council Chairman.

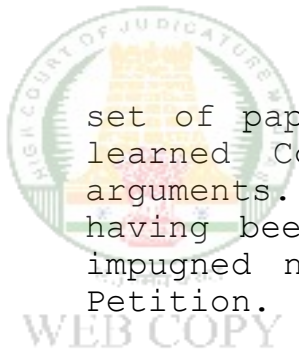
10. After referring to the aforementioned documents/orders, Mr. Veerakathiravan, learned Additional Advocate General would submit that only in accordance with the directions of the first respondent, the fourth respondent has issued the impugned notices calling upon the petitioner to appear for enquiry under Section 207(3) of the Act. Therefore, he would submit that only in accordance with Section 207 of the Act, the impugned notices were issued to the petitioner.

Discussion:

11. This Court before embarking upon the merits of this matter, will have to bear in mind that the impugned notices is not a final order passed under Section 207 of the Act removing the petitioner as a Chairman of the third respondent Panchayat Union, but, it is only a notice issued under Section 207(3) of the Act convening a meeting of Panchayat Council Members for the purpose of considering the allegations levelled against the petitioner by 10 of the Councillors who have sought for her removal on the ground of alleged irregularities.

12. As seen from the affidavit filed in support of this Writ Petition, the main ground of attack made by the petitioner against the impugned notices is that no show cause notice was issued to her which is mandatory as per Section 207(2) of the Act. According to the petitioner, the first respondent has not objectively satisfied itself with regard to the allegations levelled against the petitioner by the 10 Panchayat Councillors, as there was no explanation/objections given by the petitioner for its consideration. According to the petitioner, no personal hearing was also granted to the petitioner before issuing the impugned notices convening a meeting of the Panchayat Councillors with regard to the removal of the petitioner as the Chairman of the Panchayat Union Council.

13. The said ground of attack is unsustainable in view of the fact that before issuing the impugned notices convening a meeting, show cause notices were, in fact, sent by the Assistant Director of Panchayats, Theni District, who is a wing of the Government, on 26.10.2021, 09.11.2021 and 29.11.2021, which were refused to be received by the petitioner as seen from the postal receipts and the returned covers, which were filed by the respondents in their typed



set of papers. The same was also not categorically denied by the learned Counsel for the petitioner during the course of her arguments. The petitioner has suppressed this material fact of having been served with show cause notices before passing of the impugned notices in the affidavit filed in support of this Writ Petition.

14.It is settled law that jurisdiction of this Court under Article 226 of Constitution of India is an equity jurisdiction. One must approach the Court with clean hands, clean heart, clean mind and clean objective and a person, who has suppressed the material fact, is not entitled for adjudication on merits.

15.The Honourable Supreme Court in catena of judgments including the following decisions elaborated the consequences of suppression of material facts in the Writ jurisdiction:

(a) Udyami Evam Khadi Gramodyog Welfare Sanstha vs State of Uttar Pradesh ((2008) 1 SCC 560);

(b)K.D.Sharma vs Steel Authority of India Limited ((2008) 12 SCC 481);

(c)In Dalip Singh vs State of Uttar Pradesh and otehrs ((2010) 2 SCC 114)

(d)Manoharlal (Dead) by Lrs vs Ugrasen ((2010) 11 SCC 557)

(e)State of Madhyapradesh vs Narmada Bachao Andolan and another ((2011) 7 SCC 639); and

(f)Presitige Lights Limited vs State Bank of India ((2007) 8 SCC 449).

16.In another oft quoted English decision, in the leading case of **R.V.Kensington Income Tax Commissioner reported in (1917) 1 K.B. 486 (CA)**, it was also held that if the Court comes to a conclusion that the affidavit filed in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.

17.From the decisions referred to supra, the following principles emerge on the consequences of suppression of material facts in a Writ Petition:

(a)A writ remedy is an equitable one. While exercising extraordinary power, a Writ Court certainly bears in mind the conduct of the party who invokes the jurisdiction of the Court.

(b)Litigant before the Writ Court must come with clean hands, clean heart, clean mind and clean objective and he/she should disclose all the facts without suppressing anything. The litigant cannot be allowed to to play "hide and seek" or to "pick and choose" the facts he/she likes to disclose and to suppress (keep back)/conceal other facts.



(c) Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction.

WEB COPY (d) If litigant does not disclose all the material facts fairly and truly or states them in a disorderly manner and misleads the Court, the Court has inherent power to refuse to proceed further with the examination of the case on merits. If the Court does not reject the contention on that ground, the Court would be failing in its duty.

(e) There is a compelling need to take a serious view in such matters to ensure purity and grace in the administration of justice.

(f) The litigation in the Court of law is not a game of chess. The Court is bound to see the conduct of party who is invoking such jurisdiction.

18. In the case on hand also, there is suppression of material facts by the petitioner. The petitioner has also not denied the issuance of show cause notices by the respondents on 26.10.2021, 09.11.2021 and 29.11.2021 before passing of the impugned notices by way of a reply affidavit to the counter affidavit filed by the respondents. Even during the course of submissions made by the learned Counsel for the petitioner, she did not categorically deny the fact that show cause notices were issued prior to the passing of the impugned notices, which were not disclosed in the affidavit filed in support of the Writ Petition. Therefore, it is clear that though show cause notices were received by the petitioner prior to the issuance of the impugned notices, she has deliberately not disclosed the same in the affidavit filed in support of the Writ Petition.

19. Whether non disclosure will amount to abuse of process of Court is not necessary for this Court to decide at this stage as the petitioner has challenged only the impugned notices, under which she has been called upon to attend the meeting of the Panchayat Council. Whether non disclosure of the receipt of the show cause notice is an abuse of process of Court or not can be decided in case, only when the petitioner is removed as Chairman of the Panchayat Union Council in the final orders to be passed in the near future under Section 207 of the Act. Since challenge has been made by the petitioner only to the impugned notices convening a meeting of the Panchayat Council under Section 207(3) of the Act, there is no need for this Court to adjudicate as to whether there is an abuse of process of Court on the part of the petitioner or not.

20. The procedure contemplated upto the stage of Section 207(3) of the Act is as follows:

<https://hccservicescourts.gov.in/hccservices>



(a)Representation in writing signed by not less than 2/3rd strength of Panchayat Union Council containing a statement of charges against the Chairman of the Panchayat Union Council and presented in person to any officer appointed by the Government in this behalf by any two of the members of the Panchayat Union Council.

(b)Representation must contain charges against the Chairman for omission or refusing to carry out or disobedience of the provisions of the Act or any rules, bye laws, regulations, or lawful orders issued thereunder or abuse of the power vested on him/her.

(c)The Government shall, by notice in writing, require the Chairman to offer within a specified date, his/her explanation with respect to his/her acts of omission or commission mentioned in the notice.

(d)If the explanation is received within the specified date and the Government consider that his/her explanation is satisfactory, the Government may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in their opinion not satisfactory, the Government shall forward to the Revenue Divisional Officer of the division concerned, a copy of the notice referred to in Sub Section (1) and the explanation of the Chairman with a proposal for the removal of the Chairman from office for ascertaining the view of the Panchayat Union Council.

21.The impugned notices have been issued under Section 207(3) of the Act by the fourth respondent and he has convened the meeting based on the directions given by the first respondent by its letter, dated 02.02.2022.

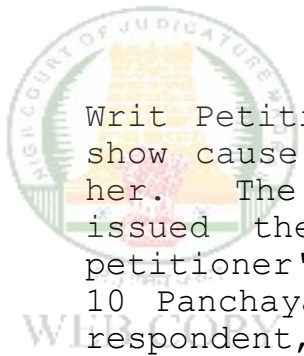
22.We now need to see as to whether the procedures contemplated under Section 207(1) to 207(3) of the Act have been followed or not.

(a)Representation in writing was signed by 10 out of 14 Panchayat Councillors, which contained the statement of charges against the petitioner and was presented by two of the Councillors, namely, Mr.B.Prabhakar, Councillor, 9th Ward and Mr.M.Machakalai, Councillor, 6th Ward, in person to the first respondent on 05.08.2021.

(b)The representation of 10 Panchayat Councillors contains specific charges against the petitioner in respect of her irregularities in her functioning as Chairman of the Panchayat Council.

(c)The Assistant Director of Panchayats, Theni District, has issued show cause notices, dated 26.10.2021, 09.11.2021 and 29.11.2021 to the petitioner calling upon her to provide explanation for the charges levelled against her by the 10 Panchayat Councillors. All the show cause notices were returned with an

<https://hcservices.mca.gov.in/hcservices/>



Writ Petition, the petitioner has failed to disclose the fact that show cause notices were sent to her and refused to be received by her. The Assistant Director of Panchayats, Theni District, has issued the show cause notices to the petitioner calling for petitioner's explanation on the charges levelled against her by the 10 Panchayat Councillors only on the instructions from the second respondent, who was appointed by the Government in this behalf under Section 207(1)(b) of the Act. A copy of the complaint given by the Councillors was also enclosed along with the show cause notices.

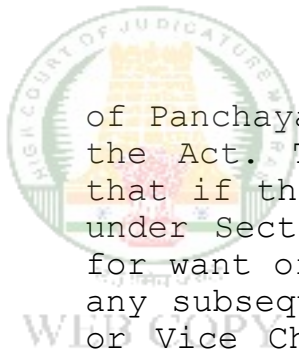
(d) Since no explanation was received to the show cause notices, the first respondent by its letter, dated 02.02.2022 has directed the fourth respondent to take action against the petitioner under Section 207 of the Act. The copy of the notice, dated 27.08.2021 issued under Section 207(1) of the Act was also enclosed along with the proposal, dated 02.02.2022. Therefore, only after the subjective satisfaction of the first respondent, the fourth respondent has issued the impugned notices, dated 07.02.2022 and 15.02.2022.

(e) The fourth respondent is the Revenue Divisional Officer of Theni Division, where, the subject Panchayat is located and therefore, through the first respondent's letter, dated 02.02.2022, he has been duly authorised by the first respondent to take further action under Section 207 of the Act against the petitioner for her removal.

23. As seen from the above sequence of events, it is clear that the fourth respondent has followed the procedure contemplated under Section 207(1) to (3) of the Act before convening a meeting under the impugned notices.

24. The decision relied upon by the learned Counsel for the petitioner in the case of **Valarmathi Chidambaram vs the District Collector, Karur District and others**, reported in **2011 (1) CTC 385**, does not have any bearing to the facts of the present case. In that decision, the proceedings under Section 207 of the Act was initiated by the District Collector on his own motion without the sanction of the Government and only on that score, the learned Single Judge of this Court held that the proceedings initiated by the District Collector was declared to be null and void. But, in the case on hand, proceedings have been initiated only by the Government after its subjective satisfaction against the petitioner as contemplated under Section 207(1) of the Act. The show cause notices were also issued by the Assistant Director of Panchayats, only on the instructions of the Government.

25. Action contemplated under Section 207 of the Act pertains only to removal of Chairman of Panchayat Union Council and it is independent of motion of no confidence in Chairman or Vice Chairman



of Panchayat Union Council, which is prescribed under Section 212 of the Act. Therefore, Section 212(14) of the Act, which stipulates that if the motion is not carried by such a majority, as stipulated under Section 212(13) of the Act, or if the meeting cannot be held for want of the quorum referred to in Sub Section (13), no notice of any subsequent motion expressing want of confidence in the Chairman or Vice Chairman shall be received until after the expiry of one year from the date of the meeting is not applicable to the facts of the instant case, which deals with Section 207 of the Act.

26. For the foregoing reasons, this Court is of the considered view that the impugned notices have been issued only by following the procedures contemplated under Section 207 of the Act. Hence, there is no merit in this Writ Petition and accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cmr

To

1. The Secretary,

The Government of Tamil Nadu,
Rural Development and Panchayat
Raj Department, Chennai.

2. The District Collector,

Office of the District Collectorate, Theni District.

3. The Commissioner,

Kadamalaikundu Mayiladumparai
Panchayat Union, Theni District.

4. The Sub Collector,

Periyakulam, Theni District.

+1 CC to M/s.D.MALAICHAMY, Advocate (SR-9537[F] dated 02/03/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9663[F] dated 03/03/2022)

+1 CC to M/s.SPL GP (SR-8754[F] dated 25/02/2022)

Order made in

W.P. (MD)No.3387 of 2022

02.03.2022

svn(CO)

TR(10.03.2022) 11P 8C

<https://hcservices.ecourts.gov.in/hcservices/>