



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.3652 of 2022

and

W.M.P. (MD)Nos.3188 and 3190 of 2022

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A.Lakshmi Azhkapuriyan

... Petitioner

vs.

1.The District Collector,
Virudhunagar, Virudhunagar District-626 002.

2.The Tahsildar,
Rajapalayam Taluk, Virudhunagar District.

3.The Block Development Officer,
Rajapalayam Panchayat Union,
Virudhunagar District.

... Respondents

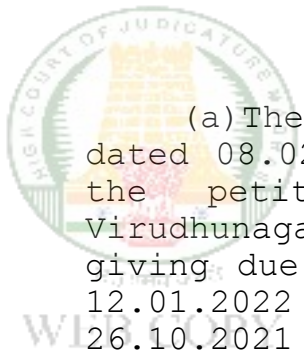
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the second respondent in his proceedings in Na.Ka.A1/1271/2022, dated 21.02.2022 and quash the same as illegal.

For Petitioner	:Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R1 and R2	:Mr.M.Lingadurai Special Government Pleader
For R3	:Mr.Satheesh Kumar Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned proceedings of the second respondent dated 21.02.2022, issued under Section 205 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as "the Act"), calling upon her to appear before the second respondent for the meeting with regard to the proceedings initiated against her for her removal as Panchayat President on 01.03.2022.

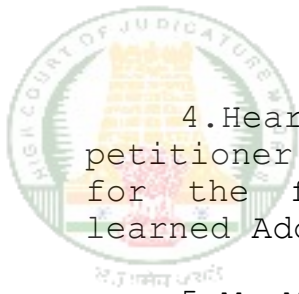
2.The impugned proceedings, dated 21.02.2022 has been challenged by the petitioner, who is the Panchayat President of Melapattam Karisalkulam Village, on the following grounds:



(a)The second respondent has disobeyed the order of this Court, dated 08.02.2022, passed in W.P.(MD)No.2545 of 2022. According to the petitioner, despite directing the District Collector, Virudhunagar, in that Writ Petition to pass final orders after giving due consideration to the explanations, dated 13.11.2021 and 12.01.2022 given by the petitioner to the show cause notices, dated 26.10.2021 and 12.01.2022 and after affording a personal hearing to the petitioner within a period of twelve weeks from the date of receipt of a copy of that order, under the impugned proceedings, the said direction issued by this Court on 08.02.2022 in W.P(MD) No.2545 of 2022 has not been followed. According to the petitioner, even without referring to the aforesaid order, dated 08.02.2022, the second respondent has passed the impugned proceedings calling upon the petitioner for a meeting on 01.03.2022 with regard to the proceedings initiated against her for her removal as Panchayat President.

(b)The procedure contemplated under Section 205 of the Act, has not been followed in letter and spirit. According to the petitioner, though it is alleged by the second respondent that only based on the direction given by the first respondent on 24.01.2022, the impugned proceedings have been initiated, neither the copy of the proceedings of the first respondent dated 24.01.2022 was furnished to the petitioner nor it was issued after the first respondent being objectively satisfied for initiating action for the removal of the petitioner as Panchayat President, which according to the petitioner is mandatory as per the provisions of Section 205 of the Act.

3.A counter affidavit has been filed by the respondents denying the allegations of the petitioner. It is their case that even on 08.02.2022, when the order in W.P.(MD)No.2545 of 2022 came to be passed by this Court, the first respondent had already issued recommendations to the second respondent for taking action against the petitioner for her removal as Panchayat President after giving due consideration to the explanations submitted by the petitioner to the show cause notices issued by the first respondent. According to the respondents, only after the objective satisfaction of the first respondent, the impugned proceedings have been initiated by the second respondent, under which the petitioner has been called for a meeting as per the provisions of Section 205 of the Act. Therefore, according to them, since the order was passed by the first respondent on 24.01.2022 itself, the direction issued by this Court on 08.02.2022 in W.P(MD)No.2545 of 2022 is not reflected in the impugned proceedings of the second respondent, dated 21.02.2022. The explanations referred to by the petitioner in this Writ Petition were duly considered by the first respondent in his order, dated 24.01.2022 and therefore, there is no violation of principles of natural justice as alleged by the petitioner.



4. Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner and Mr.M.Linga Durai, learned Special Government Pleader for the first and second respondents and Mr.N.Satheesh Kumar, learned Additional Government Pleader for the third respondent.

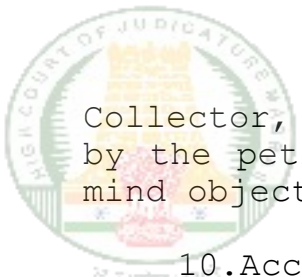
5. Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner drew the attention of this Court to the order, dated 08.02.2022 passed by this Court, in W.P.(MD)No.2545 of 2022 and would submit that in the impugned notice dated 21.02.2022, there is no finding as to whether the petitioner was afforded a fair hearing by the first respondent and whether a personal hearing was afforded to her before the first respondent passed the order dated 24.01.2022, recommending action against the petitioner to the second respondent in accordance with the provisions of Tamil Nadu Panchayats Act, 1994.

6. He would submit that without affording a personal hearing, as directed by this Court, the first respondent has passed the order dated 24.01.2022, recommending the second respondent to take legal action against the petitioner for her removal as Panchayat President. He would also submit that the petitioner was not served with the copy of the proceedings, dated 24.01.2022 passed by the first respondent. Therefore, according to him, the second respondent has disobeyed the order of this Court, dated 08.02.2022 passed in W.P.(MD)No.2545 of 2022.

7. He also drew the attention of this Court to Section 205(2) of the Act and would submit that the first respondent has not objectively considered the detailed explanation given by the petitioner to the show cause notices issued by him for her removal as Panchayat President, in his order, dated 24.01.2022.

8. In support of the aforesaid submissions, Mr.A.Ajmal Khan, learned Senior Counsel for the petitioner drew the attention of this Court to the decision of the Honourable Supreme Court in the case of **Manoharlal (Dead) by Lrs vs Ugrasen (Dead) By Lrs and others, reported in (2010) 11 SCC 557**. In the said decision, which according to the petitioner, it has been categorically held that the fact of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal and the subsequent action would be a nullity.

9. Mr.Ajmal Khan, learned Senior Counsel for the petitioner also drew the attention of this Court to a judgment of a learned Single Judge of this Court in the case of **P.Packiam vs the Inspector of Panchayat and others** reported in **2013 (1) CWC 797**, and would submit that Section 205 of the Tamil Nadu Panchayats Act, 1994, which deals with removal of a Panchayat President is a drastic power having far reaching consequence and therefore, the first respondent/District



Collector, even if he is going to overrule the explanations offered by the petitioner, he has to pass a detailed order by applying his mind objectively.

10. According to the learned Senior Counsel for the petitioner, the said exercise has not been done in the case on hand and in a mechanical fashion, the first respondent has passed the order, dated 24.01.2022 recommending the second respondent to take action against the petitioner for her removal as per the provisions of Section 205 of the Act.

Discussion:

11. Admittedly, this Court by its order, dated 08.02.2022, in a Writ Petition filed by the petitioner in W.P.(MD)No.2545 of 2022, passed a final order in the said Writ Petition calling upon the respondents in that Writ Petition to pass final orders with respect to the show cause notices, dated 26.10.2021 and 12.01.2022 issued by the first respondent after considering the explanations, dated 13.11.2021 and 12.01.2022 and after affording a personal hearing to the petitioner within a period of twelve weeks from the date of receipt of a copy of that order.

12. In W.P.(MD)No.2545 of 2022, the respondent was the District Collector (Panchayat Division), Kumarasamy Raja Nagar, Virudhunagar 626 002. The impugned proceedings has been issued by the second respondent under Section 205(3) of the Act, calling upon the petitioner to appear for a meeting with regard to her removal as Panchayat President on 01.03.2022. In the impugned proceedings, there is a reference to an order, dated 24.01.2022 said to have been passed by the first respondent recommending action against the petitioner for her removal as Panchayat President after giving due consideration to the explanations submitted by the petitioner to the show cause notices issued by the first respondent for her removal as Panchayat President. However, the said order, dated 24.01.2022, though being an internal communication, the copy of the same was not furnished to the petitioner. In the impugned proceedings, there is also no reference as to whether a copy of the order, dated 24.01.2022 passed by the first respondent was given to the petitioner or not.

13. There was a clear direction by this Court in its order, dated 08.02.2022 in W.P.(MD)No.2545 of 2022 that the petitioner must be afforded personal hearing. The contention of the respondents as seen from the counter filed before this Court is that even when the order, dated 08.02.2022, came to be passed in W.P.(MD)No.2545 of 2022, the order, dated 24.01.2022 was already passed by the first respondent in accordance with the provisions of Section 205 of the Act, recommending action against the petitioner for her removal as Panchayat President. In fact, the order, dated 08.02.2022 was passed by this Court in W.P.(MD)No.2545 of 2021 only after the respondents were represented through their Counsels. On that date,



this Court was not informed about the passing of the order, dated 24.01.2022 by the District Collector recommending action against the petitioner for her removal under Section 205 of the Act.

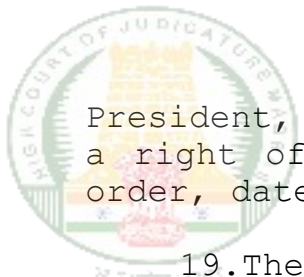
14. When the first respondent, who was the respondent in W.P(MD) No.2545 of 2022 was aware of the passing of the order, dated 08.02.2022, he should have informed the second respondent, who has passed the impugned proceedings about the passing of the order and the second respondent should have sought for clarification from this Court before passing the impugned proceedings, dated 21.02.2022 calling upon the petitioner to appear for the meeting on 01.03.2022 with regard to the petitioner's removal as Panchayat President. There is also no reference to the order, dated 08.02.2022 passed by this Court, in W.P.(MD)No.2545 of 2022 in the impugned proceedings of the second respondent, dated 21.02.2021.

15. As rightly held by the learned Single Judge of this Court in the decision referred to by the learned Senior Counsel for the petitioner in **P.Packiam vs the Inspector of Panchayat and others** reported in **2013 (1) CWC 797**, the removal of a Panchayat President, is a drastic order and therefore, having far reaching the consequence and therefore, the power under Section 205 of the Act, has to be exercised by strict compliance of the statutory requirements. This Court is in agreement with the said view.

16. As seen from the order, dated 24.01.2022, which the first respondent is said to have passed under Section 205 of the Act, recommending legal action against the petitioner for her removal as Panchayat President, excepting for referring to the explanations submitted by the petitioner to the show cause notices issued by the first respondent, no detailed reasoning has been given.

17. Being a drastic action, that is removing a Panchayat President, only after the objective satisfaction of the first respondent that the evidence placed before him over the allegations levelled against the petitioner, is found to be satisfactory and the explanations submitted by the petitioner to the show cause notices is found to be unsatisfactory, the first respondent is empowered to recommend legal action against the petitioner for her removal as Panchayat President and recommend the same to the second respondent accordingly.

18. Further, this Court had made it clear in its order, dated 08.02.2022 in W.P.(MD)No.2545 of 2022, that the petitioner must be afforded a fair hearing and must also be granted personal hearing. But in the order, dated 24.01.2021 passed by first respondent, no personal hearing was granted to the petitioner. Though the order, dated 24.01.2022 was passed even before the order, dated 08.02.2022 passed by this Court in W.P(MD)No.2545 of 2022, being a drastic action ie., seeking removal of the petitioner as Panchayat



President, the first respondent ought to have granted the petitioner a right of personal hearing, which he has failed to do so in his order, dated 24.01.2022

19.The decision relied upon by the learned Senior Counsel for the petitioner in the case of **Manoharlal (Dead) by Lrs vs Ugrasen (Dead) By Lrs and others, reported in (2010) 11 SCC 557** also supports the case of the petitioner. In that decision also, the Honourable Supreme Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal and the subsequent action would be a nullity.

20.The Honourable Supreme Court has referred to various decisions with regard to the very same proposition in the said judgment. The case on hand also falls under the very same category, wherein, a direction was issued by this Court on 08.02.2022 to the first respondent calling upon him to provide a fair hearing to the petitioner and also calling upon him to grant personal hearing to the petitioner, but, whereas, though the order, dated 24.01.2022 came to be passed by the first respondent even prior to the order, dated 08.02.2022 passed by this Court, no personal hearing was afforded to the petitioner and a detailed reasoning has also not been given by the first respondent for rejecting the petitioner's explanation to the show cause notices issued by the first respondent with regard to the petitioner's removal as Panchayat President.

21.The first respondent has also not informed the second respondent about the passing of the order, dated 08.02.2022 by this Court in W.P.(MD)No.2545 of 2022. Being a superior authority, the first respondent ought to have informed the order dated 08.02.2022 to the second respondent. But, without considering the same, the impugned proceedings has been issued by the second respondent calling upon the petitioner to appear in person on 01.03.2022 with regard to her removal as Panchayat President, which in the considered view of this Court is per se illegal and has to be set aside.

22.For the foregoing reasons, this Court is of the considered view that the first respondent has violated the principles of natural justice and has also not complied with the direction given by this Court on 08.02.2022 in W.P.(MD)No.2545 of 2022 in letter and spirit by affording a fair hearing to the petitioner and by granting the right of personal hearing. Therefore, the impugned proceedings, dated 21.02.2022 issued by the second respondent is hereby quashed and the Writ Petition is allowed. However, liberty is granted to the respondents to take fresh action against the petitioner, if so advised, under Section 205 of the Tamil Nadu Panchayats Act, 1994 or under any other statutory provisions in the manner known to them



under law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.II)

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Sub Assistant Registrar(CS)

cmr

To

- 1.The District Collector,
Virudhunagar, Virudhunagar District-626 002.
- 2.The Tahsildar,
Rajapalayam Taluk, Virudhunagar District.
- 3.The Block Development Officer,
Rajapalayam Panchayat Union,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-9251[F] dated 01/03/2022)

W.P.(MD)No.3652 of 2022
28.02.2022

RD(11.03.2022) 7P 5C