



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.251 of 2022

and

C.M.P. (MD)No.2322 of 2022

S.Chandra Santhosam

... Appellant / Petitioner

-Vs-

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
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. ... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying this Court to set aside the order dated 02.03.2022 made in W.P(MD)No.3387 of 2022.

Prayer in WP(MD) . 3387/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records relating to the impugned enquiry notice issued by the 4th Respondent in his proceedings in Na.Ka.No.898/2022/A2 dated 07.02.2022 and the consequential notice issued by the 4th Respondent in his proceedings in Na.Ka.No.898/2022/A2 dated 15.02.2022 and quash the same as illegal and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.



For Appellant : Mr.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates
For Respondents : Mr.Veerakathiravan,
Additional Advocate General,
assisted by Mr.S.R.A.Ramachandran,
Additional Government Pleader.

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR , J.

The petitioner, aggrieved by the proceedings taken under Section 207 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act') for her removal as Chairman, had filed the Writ Petition.

2.The petitioner is the Chairman of Kadamalaikundu - Mayiladumparai Panchayat Union. Some of the members of the Panchayat, have presented a representation to the Government, seeking removal of the Chairman under Section 207 of the Act.

3.It should be pointed out at this juncture that earlier attempt made by the councillors under Section 212 of the Act failed, since there was no quorum for the meeting. The Government upon receipt of the representation, directed the 4th respondent to take appropriate action against the Chairman of the Panchayat. Pursuant to the same, the Assistant Director of Panchayat issued a show cause notice to the petitioner, which has been refused to be received by the petitioner. Thereafter, the 4th respondent / Sub Collector called for a meeting. It is this notice issued by the Sub Collector / 4th respondent, calling for a meeting that was under challenge before the Writ Court.

4.The main contention before the Writ Court was that the show cause notice, which was issued by the Assistant Director of Panchayat, is not valid and it is for the Government to have issued such a notice. Reliance was placed on Section 207 (1) of the Act, which reads as follows:-

"...the Government shall, by notice in writing, require the Chairman to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.



If the explanation is received within the specified date and the Government consider that the explanation is satisfactory, the Government may drop further action with respect to the notice..."

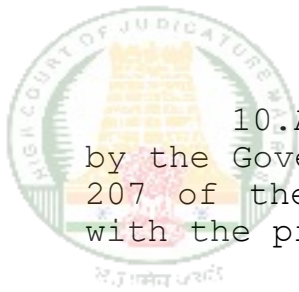
5. The learned Single Judge, however, dismissed the Writ Petition on the conclusion that the petitioner has been given a fair opportunity and the fact that the petitioner had refused to receive the notice sent by the Assistant Director of Panchayat, was put against her.

6. We have heard Mr. Ajmal Khan, learned Senior Counsel appearing for the appellant and Mr. Veerakathiravan, learned Additional Advocate General appearing for the respondents. By consent of both parties, the main Writ Appeal is taken up for final disposal at the admission stage itself.

7. Mr. Ajmal Khan, learned Senior Counsel appearing for the appellant would submit that a reading of Sub Sections 1 and 2 of Section 207 of the Act makes it very clear that there should be a subjective satisfaction on the part of the Government before the Government directs the Revenue Divisional Officer to convene a meeting. According to the learned Senior Counsel, it is for the Government to have sent a show cause notice to the appellant and the Government should have considered the reply by the appellant. Only when the Government arrived at that the subjective satisfaction that the explanation is not satisfactory, further proceedings under Sub Sections 3 to 13 of Section 207 of the Act could be taken.

8. Contending contra, Mr. Veerakathiravan, learned Additional Advocate General appearing for the respondents would submit that since the very representation was given directly to the Government and the Government had directed the Sub-Collector to proceed further, the same would satisfy the requirements of Section 207 of the Act.

9. We are unable to agree with the contentions of the learned Additional Advocate General for the respondents. Sub Section 1 of Section 207 of the Act requires the Government to, by notice in writing, call for an explanation from the Chairman in respect of the acts of omission or commission mentioned in the notice issued under Clause b of Sub Section 1 of Section 207. Sub Section 2 of Section 207 of the Act states that if the explanation received is not satisfactory, the Government may proceed further. Sub Section 2 of Section 207 of the Act enables the Government to drop further action, if it is found that explanation is satisfactory. The provisions of Section 207 of the Act only empower the Government to issue notice, consider the explanation and arrive at subjective satisfaction. There is no provision for delegation of those powers to anyone else.



10. Admittedly, in the case on hand, no notice has been issued by the Government in compliance of the provision of Sub Section 1 of 207 of the Act. Therefore, there is an automatic non-compliance with the provision of Sub Section 2 of Section 207 of the Act.

11. Realising the difficulty in sustaining the procedure adopted, the learned Additional Advocate General would submit that the notice issued may be quashed with liberty to the Government to proceed further in accordance with Section 207 of the Act.

12. De hors the statement made by the learned Additional Advocate General, on facts also the proceedings are not strict in compliance with Sub Sections 1 and 2 of Section 207 of the Act. Hence, this Writ Appeal is allowed, the order of the learned Single Judge is set aside, the Writ Petition is allowed and the impugned notice is quashed with liberty to the Government to proceed in accordance with law from the stage of Sub Section 1 of Section 207 of the Act. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Secretary,
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.AJMAL ASSOCIATES, Advocate (SR-12857[F] dated
18/03/2022)



WA(MD)No.251 of 2022

+1 CC to M/s.SPL GP (SR-13024[F] dated 18/03/2022)

W.A(MD) No.251 of 2022
17.03.2022

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KB(31.03.2022) 5P 7C