



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8526 of 2022

and

W.M.P.(MD)No.6265 of 2022

WEB COPY

R.Sathya

... Petitioner

Vs.

1.The District Collector / Inspector of Panchayats,
Tuticorin District,
Tuticorin.

2.R.Arunkumar

3.A.Micheal Navamani

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice of the first respondent in Na.Ka.No.B1/292/2022, dated 19.04.2022 and quash the same and direct the first respondent to enquire into the complaint of forgery of signature and take action against the respondents 2 & 3.

For Petitioners : Mr.Mahaboob Athif
for Mr.K.K.Udayakumar

For R1 : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General appearing for R1 assisted by the learned Special Government Pleader.

2. Even though notice was issued to the third respondent and private notice was also permitted, it appears that due to oversight, notice was not taken.

3. The learned counsel appearing for the petitioner would state that this writ petition can as well be decided even without notice being served on the 3rd respondent. The petitioner was elected as the member of the 5th ward of Tuticorin District Panchayat in the local body election held in the year 2020. The District Panchayat



comprises 17 ward members. The petitioner contested for the post of District Chairman and she was elected and took oath on 11.01.2020. While so, one Arun Kumar sent a requisition purportedly signed by 13 more members to the District Collector, Tuticorin / Inspector of Panchayats for convening a meeting for removal of the writ petitioner as they have lost confidence in her. Pursuant to the said requisition, the District Collector himself issued notice dated 19.04.2022 for conveying a meeting on 12.05.2022 at 11.00 a.m., in the third floor of the District Collector. Earlier, the District Collector issued show cause notice dated 05.04.2022 calling upon the petitioner to offer her explanation. The petitioner sent her reply on 08.04.2022. She thereafter filed the present writ petition challenging the notice dated 19.04.2022 which proposed convening of the meeting for considering the No Confidence Motion. Vide order dated 11.05.2022, a learned Judge of this Court granted interim relief by permitting the meeting to go on but directed that no final decision will be taken by the first respondent. As permitted by this Court, the meeting was held on 12.05.2022.

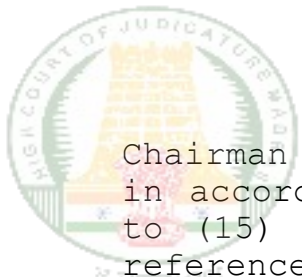
4. The learned Additional Advocate General submitted that on the said date, 14 members attended the meeting. The petitioner failed to participate in the meeting. All the 14 members voted in favour of No Confidence Motion. The learned Additional Advocate General filed a status report.

5. The learned counsel appearing for the petitioner submitted that the entire proceedings will have to be nullified, since the statutory provisions have not been complied with. He placed reliance on the decision reported in **2006-3-L.W.383 (Seeniammal Vs. The State of Tamil Nadu)**.

6. Per contra, the learned Additional Advocate General submitted that democracy is basically a game of numbers and that the petitioner had miserably lost in the said numbers game. The District Panchayat comprises 17 members and out of them, 14 members are ranged against the petitioner. He also would point out that the writ petitioner was not directly chosen by the people for the post of chairman and that she was after all elected only by the members and that once the members do not want her to continue in the said post, she has to vacate the same. He would call upon this Court to construe the relevant provisions relied upon by the petitioner as directory in nature.

7. I carefully considered the rival contentions and went through the materials on record.

8. Section 213 of the Tamil Nadu Panchayats Act, 1994 deals with the Motion of no Confidence in Chairman or Vice-Chairman of District Panchayats. It reads as follows:-



"A motion expressing want of confidence in the Chairman or Vice-Chairman of a District Panchayat may be made in accordance with the procedure specified in Sub-Sections (2) to (15) of Section 212, subject to the modification that the reference to Revenue Divisional Officer in the said sub-Sections shall be construed as a reference to the Collector."

9. Since the said provision refers to Section 212 of the Act, it is necessary to extract the said provision which reads as follows:-

"212.Motion of no confidence Chairman or Vice-Chairman of Panchayat Union Council:-

(1) Subject to the provisions of this section, a motion expressing want of confidence in the vice-chairman of a panchayat union council may be made in accordance with the procedure laid down herein.

(2) Written notice of intention to make the motion, signed by members of the panchayat union council not less in number than one-half of the sanctioned strength of the panchayat union council, together with a copy of the motion which is proposed to be made and a written statement of the charges against the vice-chairman shall be delivered in person to the Revenue Divisional Officer of the division by any two of the members of the panchayat union council signing the notice.

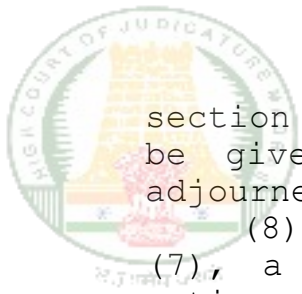
(3) A copy of the statement of charges along with the motion shall be caused to be delivered to the concerned vice-chairman by the Revenue Divisional Officer and the vicechairman shall be required to give a statement in reply to the charges within a week of the receipt of the motion by the vice-chairman.

(4) The Revenue Divisional Officer shall then convene a meeting for the consideration of the motion at the office of the panchayat union council at a time appointed by him.

(5) The Revenue Divisional Officer shall give to the members notice of not less than fifteen clear days of the meeting and of the time appointed therefor.

(6) The Revenue Divisional Officer shall preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour after the time appointed for the meeting, the Revenue Divisional Officer is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members by the Revenue Divisional Officer under sub-section (7).

(7) If the Revenue Divisional Officer is unable to preside at the meeting, he may, after recording his reasons in writing adjourn the meeting to such other time as he may appoint. The date so appointed shall not be later than thirty days from the date appointed for the meeting under sub-



section (4). Notice of not less than seven clear days shall be given to the members of the time appointed for the adjourned meeting.

(8) Save as otherwise provided in sub-sections (6) and (7), a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(9) As soon as the meeting convened under this section has commenced, the Revenue Divisional Officer shall read to the panchayat union council the motion for the consideration of which it has been convened, the statement of charges and the statement, if any, of the vice-chairman in reply to the said charges.

(10) There shall be no debate on any motion under this section.

(11) The Revenue Divisional Officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(12) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Revenue Divisional Officer to the Government.

(13) If the motion is carried with the support of not less than two-thirds of the sanctioned strength of the panchayat union council, the Government shall, by notification, remove the vice-chairman of the panchayat union council.

(14) If the motion is not carried by such a majority as aforesaid, 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 same vice-chairman shall be received until after the expiry of six months from the date of the meeting.

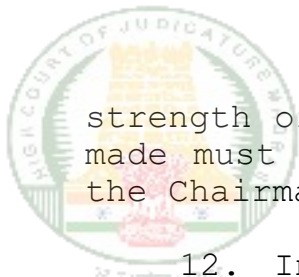
(15) No notice of a motion under this section shall be received:-

(i) within six months of the assumption of office by the vice-chairman. Or

(ii) during the last year of the term of office of a Chairman or Vice-Chairman."

10. Even at the very outset, I must bear in mind the fundamental principle that the provisions relating to removal of the elected representatives will have to be construed strictly. If there is any deviation or non-adherence to the statutory mandate, then, the consequence will have to necessarily follow.

11. Section 212(2) of the Tamil Nadu Panchayats Act states that the the members expressing no confidence in the chairman must submit a written notice of intention to make the motion. It must be signed by the members not less in number than $3/5^{\text{th}}$ of the sanctioned



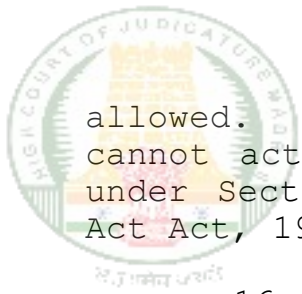
strength of the body. A copy of the motion which is proposed to be made must be enclosed. A written statement of the charges against the Chairman or Vice-Chairman should also be enclosed.

12. In this case, the requisitionists have not enclosed the copy of the motion which is proposed to be made. They have also not enclosed the written statement of the charges against the writ petitioner. Therefore, I am more than satisfied that the procedure set out in Section 212(2) of the Tamil Nadu Panchayats Act, 1994 has not been complied with. The first respondent has failed to strictly adhere to the statutory mandate set out in Section 212(2) r/w Section 213 of the Tamil Nadu Panchayats Act, 1994.

13. Of-course, the learned counsel appearing for the petitioner took me through the contents of the requisition submitted by the members and emphasized that the allegations regarding functioning of the writ petitioner are rather vague and that there is no specific imputation of misconduct, in which case, charges cannot be said to be made out. Of-course, a learned Judge of this Court in the decision reported in **2006-3-L.W.383 (Seeniammal Vs. The State of Tamil Nadu)** had gone to the extent of holding that No Confidence Motion on baseless and vague allegations cannot be moved. This decision may not fully go to the rescue of the petitioner. In paragraph No.10 of the said decision, it has been observed that the writ petitioner therein was elected to the office of the chairperson of the village panchayat by the local villagers in a democratic manner. I bear in mind the distinction between direct election and indirect election. In the case relied on by the petitioner, the petitioner was directly elected. But in the case on hand, the petitioner was directly elected only as a ward member. Her election to the post of chairman was by way of indirect election. The members constituting the panchayat elected the petitioner as a chairman. Therefore, neither the executive authority nor this Court can go into the content or weight of the charges.

14. I do also not find any merit in the objection of the learned Additional Advocate General that since the petitioner do not participate in the meeting held on 12.05.2022, she has to be non-suited on that ground.

15. As rightly pointed out by the learned counsel appearing for the petitioner, as per sub-section 10 of Section 212 r/w Section 213 of the Act, there cannot be any debate on any No Confidence Motion. Therefore, the absence of the petitioner cannot be put against her. I interfere only on the ground that the requisition made by the members to the District Collector was not strictly in terms of Section 212(2) r/w Section 213 of the Tamil Nadu Panchayats Act. The impugned proceedings are quashed. The writ petition is



allowed. I make it clear that the outcome of this writ petition cannot act as impediment for the members from taking fresh steps under Section 212(2) r/w Section 213 of the Tamil Nadu Panchayats Act Act, 1994.

16. With the aforesaid liberty, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

rmi

To
The District Collector / Inspector of Panchayats,
Tuticorin District,
Tuticorin.

+1 CC to M/s.SPL.GP. (SR-25598,25839[F] dated 14/06/2022)

+1 CC to M/s.K.K. UDAYAKUMAR, Advocate (SR-25696[F] dated 14/06/2022)

W.P. (MD)No.8526 of 2022

13.06.2022

RK/05.07.2022 : 6P/4C