



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)Nos.16395 of 2022
and
WMP(MD)No.11844 of 2022**

Sathya

... Petitioner

v.

1.The District Collector,
Tuticorin, Tuticorin District.

2.R.Arunkumar

3.A.Michael Navamani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned show cause notice passed by the first respondent vide Na.Ka.No.P1/600/2022 dated 19.07.2022 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy for Mr.A.Balaji

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.K.Balasubramanian
Special Government Pleader for R1



ORDER

Heard Mr.T.Lajapathi Roy, the learned counsel for the petitioner and Mr.Veera Kathiravan, the learned Additional Advocate General assisted by Mr.K.Balasubramani, the learned Special Government Pleader for the first respondent.

2.The petitioner was elected as the member of the fifth ward of Thoothukudi District Panchayat in the local body election held in the year 2020. The District Panchayat comprises 17 members. The petitioner contested for the post of District Chairman and was duly elected and took oath on 11.01.2020. While so, 13 members of the District Panchayat sent a requisition to the Inspector of Panchayats for convening a meeting for removal of the petitioner on the ground that they have no confidence in her. Pursuant to the said request, the District Collector/Inspector of Panchayats issued notice dated 19.04.2022 for convening a meeting on 12.05.2022 at 11.00 A.M. Earlier, the District Collector had issued show cause notice dated 05.04.2022 calling upon the petitioner to offer her explanation. The petitioner without taking part in the said meeting filed WP(MD)No.8526 of 2022 challenging the said notice dated 19.04.2022. The said writ petition was allowed by me on 13.06.2022 in the following terms :



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"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 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 3/5th 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."

Even while quashing the notice impugned in the said writ petition and allowing the writ petition, I made it clear that the outcome of the writ petition will not be a bar for the members from taking fresh steps under Section 212 (2) r/w. 213 of the Tamil Nadu Panchayats Act, 1994. The writ petition was



allowed with the aforesaid liberty. After the writ petition was allowed, the private respondents herein who are members of the Thoothukudi Panchayat submitted a fresh requisition dated 15.07.2022. The written notice of intention to make the motion sent by 13 members together with a copy of the motion and written statement of charges against the petitioner was delivered to the Inspector of Panchayats/District Collector. Pursuant to the said request, the impugned notice dated 19.07.2022 was issued by the District Collector calling upon the petitioner to offer her explanation within one week. This show cause notice is put to challenge in this writ petition.

3.The learned counsel appearing for the petitioner took me through the averments set out in the affidavit filed in support of the writ petition. His pointed contention is that the impugned show cause notice is barred under Section 212(14) r/w.213 of the Tamil Nadu Panchayats Act, 1994. The learned counsel for the petitioner relied on the decision reported in **(2006) 3 LW 383 (Seeniammal v. The State of Tamil Nadu)**.

4.Per contra, the learned Additional Advocate General appearing for the first respondent submitted that Section 212(14) r/w.213 of the Act will not come in the way. In any event, the earlier writ petition was allowed with liberty to the requisitionists to take fresh steps in accordance with law. If the



petitioner felt aggrieved, she ought to have challenge the grant of liberty.

Having failed to do so, it is not open to the petitioner to maintain this writ petition. He called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The case on hand pertains to the proposed removal of the chairman of the District Panchayat of Thoothukudi. As per Section 56 of the Act, the elected members of the District Panchayat elect two members from among themselves to be respectively the Chairman and Vice Chairman. It is thus clear that the petitioner was elected only by the fellow ward members and not directly by the people. The only question that arises for consideration is whether the sub-section 14 of Section 212 r/w.213 of the Act will come in the way of the Inspector of Panchayats from acting on the requisition of the members who have expressed their no confidence in the writ petitioner. Section 212 of the Act 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 vice-chairman 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 subsection (4). Notice of not less



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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 subsection (13), no notice of any subsequent motion expressing want of confidence in the same vice-chairman shall be received until after the expiry of one year 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



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vice-chairman. Or (ii) during the last year of the term of office of a Chairman or ViceChairman.”

6.The learned counsel for the petitioner pointed out that though the Chairman and the Vice-chairman are elected by the fellow ward members and they have to be removed if $\frac{4}{5}^{\text{th}}$ of the sanctioned strength of the District Panchayat lose confidence in them, the legislature has consciously erected certain barriers against such removal. Sub-section (15) of Section 212 of the Act states that no notice of motion under this section shall be received within one year of the assumption of office by or during the last year of the term of office of Chairman or Vice Chairman. Apart from these two threshold barriers, one other barrier has been erected by the legislature. As per sub-section (14) of Section 212 of the Act, once a no confidence motion could not be carried out, a fresh no confidence motion cannot be moved until the expiry of one year from the date of the earlier meeting. According to the learned counsel, in this case, the meeting for removing the petitioner was held on 12.05.2022. The outcome of the said meeting was nullified by this Court. He would lay particular stress on the expression “as aforesaid” occurring in sub-section (14). The learned counsel for the petitioner contended that in ***Seeniammal's*** case it was held that the aforesaid provision mandates that if the motion had failed for some reason, another motion cannot be moved within a period of one year from that date. The learned counsel for the petitioner would submit



that when a learned Judge of this court had given a particular interpretation to the said provision, this court ought to follow the same and in that event of any disagreement must refer the matter to a larger bench. He also wanted me to derive inspiration from the Kerala Local Authorities (Prohibition of Defection) Act, 1999 which is anti-defection law governing the members of the local bodies.

7.I am not persuaded by the submissions of the learned counsel for the petitioner. Section 212(14) of the Act is as follows :

“(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 subsection (13), no notice of any subsequent motion expressing want of confidence in the same vice-chairman shall be received until after the expiry of one year from the date of the meeting.”

This sub-section refers to two circumstances. The second circumstance refers to lack of quorum referred to in sub-section (13). The petitioner's counsel would therefore claim that the expression “as aforesaid” occurring in the earlier part of the sub-section refers to Section 212 in its entirety. That is why, the contention has been advanced that the failure of the motion for whatever reason will create an automatic barrier against moving a fresh motion for the next one year. Seeniammal's case is on the same lines. Yet, I am not able to agree. The Hon'ble Supreme Court in the decision reported in **(2020) 6 SCC 812 (Laxmi Singh v.**



Rekha Singh) noted that it is a trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions. The expression “as aforesaid” has been described to mean “immediately antecedent” in P.Ramanatha Aiyar's *The Law Lexicon*. Therefore, this term would only refer to sub-section 13 and not Section 212 in its entirety. Even if this expression is deleted, the meaning or effect of the provision will not change. Of course, the Court should refuse to regard any word or phrase or clause as superfluous unless such a result is clearly unavoidable. (*D.Sanjeevayya v. Election Tribunal*, AIR 1967 SC 1211). However, sub-section 14 cannot be understood in any other way.

8.The Hon'ble Full bench of the Madras High Court in the decision reported in *The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai v. Kamaraj College of Engineering and Technology, Managing Board, 2009 (5) CTC 289* on construction of a statute, had observed as follows :

“16.For construction of a statute, the cardinal rule is that the statute must be understood according to its plain language unless there are adequate grounds to justify the inference to what the Legislature clearly intended. Nothing be added or subtracted therefrom.”



Sub-section 14 cannot be expansively or liberally interpreted. In Seeniammal's case, it has been held that if the motion had failed for some reason, another motion cannot be moved within one year from the date of the meeting. With utmost respect, I must observe that the exact text of Section 212(14) of the Act has not been reproduced. The sub-section refers to only two situations. Hence, there is no justification in holding that if the motion had failed for some reason, a fresh motion cannot be moved for the next one year. The expression "as aforesaid" occurring in sub-section 14 can only mean the majority referred to in sub-section (13) of Section 212.

9. The petitioner was elected only by her fellow ward members under Section 56 of the Act. If $\frac{5}{4}^{\text{th}}$ members of the sanctioned strength of the local body have no confidence in the petitioner, the government shall by notification remove her from the post. In the case of president of a village panchayat or chairman of panchayat union council, even if the majority had gone against them, still, the Inspector of Panchayats or the Government can take a contrary view. But in the case of District Panchayat, neither the District Collector or the Government have any say. They have to simply go by the majority opinion as prescribed by the Act.



10. When once the requirements set out in Section 212(2) r/w. Section 213 of the Act are met, the Inspector of Panchayats has to necessarily call upon the Chairperson or vice-chairperson to offer her explanation in this regard. Thereafter, the District Collector shall convene the meeting and if in the meeting, the motion is carried by a majority of four fifth of the sanctioned strength, then, the Government shall by notification remove the Chairman or Vice Chairman as the case may be. This is the statutory scheme.

11. For the foregoing reasons, I hold that the impugned show cause cannot be said to be hit by Section 212 (14) r/w. Section 213 of the Act. The Inspector of Panchayats/District Collector, Tuticorin has acted in strict compliance with the provisions of the Tamil Nadu Panchayats Act, 1994. It is for the petitioner to offer her explanation and her fate will be decided by the members on the date of meeting. Since the petitioner had come to this Court even without offering her reply, I grant her one more week from the date of receipt of copy of this order to offer explanation.

12. The writ petition is dismissed with the aforesaid observations. No costs. Connected miscellaneous petition is closed.

27.07.2022

Index : Yes/no, internet : yes / no
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G.R.SWAMINATHAN, J.

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