



W.P.(MD)Nos.16228 & 16230 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.16228 & 16230 of 2015

and

M.P.(MD)Nos.1, 1, 2, 2 of 2015

W.P.(MD)No.16228 of 2015

V.Kumaresan

... Petitioner

Vs.

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Block Development Officer,
(Village Panchayat)
Tenkasi Panchayat Union,
Tenkasi,
Tirunelveli District.

3. The President,
Ayiraperi Village Panchayat,
Tenkasi Panchayat Union,
Tirunelveli District.

... Respondents



W.P.(MD)Nos.16228 & 16230 of 2015

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 relating to the Impugned Proceedings in A2/3710/2014, dated 27.10.2014 and consequent Charge Memo in Na.Ka.No.N5/ 43569/2014 (1) , dated 11.07.2015 passed by the first Respondent and quash the same.

W.P.(MD)No.16230 of 2015

S.Helwin

... Petitioner

Vs.

- 1.The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Block Development Officer,
(Village Panchayat)
Tenkasi Panchayat Union,
Tenkasi,
Tirunelveli District.
3. The President,
Ayiraperi Village Panchayat,
Tenkasi Panchayat Union,
Tirunelveli District.

... Respondents



W.P.(MD)Nos.16228 & 16230 of 2015

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 relating to the Impugned Proceedings in A2/3710/2014, dated 27.10.2014 and consequent Charge Memo in Na.Ka.No.N5/43569/2014 (2) , dated 11.07.2015 passed by the first Respondent and quash the same.

(In both cases)

For Petitioners : Mr.T.S.Mohamed Mohideen

For Respondents : Mr.D.Farjana Ghoushia
Special Government Pleader

COMMON ORDER

These Writ Petitions are filed for Writ of Certiorari to quash impugned proceedings, dated 27.10.2014 and consequential Charge Memo dated 11.07.2015.

2. The brief facts as stated in the affidavit in W.P.(MD)No. 16228 of 2015 are that the petitioner is presently working as Assistant Executive Engineer (Road and Bridges). The petitioner was



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appointed as Assistant Engineer in Rural Development and Panchayat Raj Department with effect from 05.08.1999, then promoted as Assistant Executive Engineer. When the petitioner was working in Tenkasi Sub Division, with effect from 15.08.2011, the Grama Saba meeting held on 01.05.2013, regarding the issues for the upliftment of people living within the jurisdiction of the third respondent Panchayat. Thereafter, under subject 18 a proposal regarding construction of drainage and cement concrete pavement in Angarayankulam Pettiakulam within the jurisdiction of the third respondent Panchayat was proposed. The Grama Saba through Resolution No.84, approved the said proposal, vide Resolution No.45 dated 31.07.2013. The resolution was also passed based on the people representation, dated 10.07.2013. Based on the resolution, the second respondent directed the Assistant Engineer, Tenkasi Panchayat Union to prepare an estimate for construction of drainage and cement concrete pavement. As directed, the Assistant Engineer prepared an estimate for Rs.9,92,000/-. Thereafter, the second respondent through his letter, dated 27.11.2013 asked the Executive Engineer, Rural Development, Tirunelveli, for technical approval



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regarding the estimate. After verifying the estimate, the Executive Engineer, granted approval on 29.11.2013. The first respondent on 22.01.2014 granted administrative sanction and the technical sanction was granted by the Executive Engineer, Rural Development, on 28.01.2014. As per Tamil Nadu Panchayats (Preparation of Plans and Estimates for Works and Mode and Conditions of Contracts) Rules, 2007, an auction was conducted and granted sanction for works valuing from Rs.5,00,000/- and up to Rs.30,00,000/-. However, the impugned order was passed as if the petitioner and three other persons alone involved in this project and initiated recovery proceedings, dated 27.10.2014. The contention of the petitioner is that the recovery proceedings was initiated even before the disciplinary proceedings was initiated. Moreover, the recovery proceeding was initiated without issuing any show cause notice. Subsequent to this recovery proceedings, the respondents issued a Charge Memo, dated 11.07.2015. Aggrieved over the same, the present writ petition has been filed.

3. When the matter was taken up for hearing, the learned



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Counsel appearing for the petitioner submitted that the other co-delinquents raised the similar plea before this Court and filed a writ petitions in W.P.(MD)Nos.17040 to 17042 of 2012, dated 12.03.2015. The High Court, vide order, dated 12.03.2015 has allowed the writ petitions and quashed the impugned proceedings and the relevant portion of the order is extracted hereunder:

“13. From the materials on record, it is seen that as per paragraph of the guidelines, a project can be implemented, if only after the name is approved by the Gramasabha and administrative sanction is granted by the respondents herein. A proposal for the project has to be prepared by a committee consisting of Village Panchayat President concerned, Block Development Officer (Village Panchayat) and then Assistant Engineer (RD)/Block Engineer of the concerned Block. After formulating the proposal, the same has to be placed before the Gramasabha for approval. In the present case, the petitioner in W.P.(MD)Nos.17041 and 17042 of 2012 were members of the committee along with the President of the Village Panchayat. The proposal was placed before the Gramasabha. The Gramasabha has to approve the same and its was sent to the respondents 1 and 2. The respondents 1 and 2 after consideration of the project, granted administrative sanction. Therefore, it cannot be said that the petitioners are responsible for selection of the work. Further, the second respondent has stated that on 07.04.2012 when the first inspection was made, stop work order was issued. The respondents have not substantiated by any acceptable material. The petitioner in W..(MD)No.17040 of 2012 did not have any role to play



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in the selection of the project. Even after technical sanction, only Executive Engineer has power to grant sanction for a project, if cost is more than Rs.5,00,000/-.

14. In view of the fact that the petitioner in W.P. (MD)No.17040 of 2012 did not have any role to play in the selection and proposal of committee, in which the petitioner in W.P.(MD)Nos.17041 and 17042 of 2012 were members, which proposal was approved by the Gramasabha and the respondents, the petitioners cannot be held responsible for the loss to the Government. The second respondent has stated that the explanations submitted by the petitioners were considered and then only, the impugned order of recovery was passed. In the impugned order, there is no reference to the explanation submitted by the petitioners and there is nothing in the impugned order to show that the explanation submitted by the petitioners were considered by the respondents.

15. It is pertinent to note that the Village Panchayat has passed a resolution for treating the improvement of the road in question as Panchayat project and permission from the first respondent to pay a sum of Rs.4,94,829/- from the village Panchayat fund to THAI scheme.

16. For the above reasons, the petitioners are entitled to succeed.

17. In the result, the impugned order dated 10.12.2012 passed by the first respondent is set aside. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed."

4. The learned Counsel appearing for the petitioner further submitted that the recovery order was issued even prior to the charge memo. Therefore, this Court is of the considered opinion that the



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recovery order is not legally sustainable for violating the principles of natural justice.

5. The next contention raised by the petitioner is that the work was selected through Grama Saba and Panchayat resolution. The Grama Saba has selected the project based on the representation from the people. Before approving the project, the higher Officials has obtained sanction. Moreover the Executive Engineer of Rural Development Department had inspected the road on 20.10.2020 and has certified that

“The Road was inspected by me on 20.10.2020, during my inspection the Road was in good condition and the road was found very useful to the other Agriculture purpose”

When the Executive Engineer has certified that the road is useful, then the very basis of the charge itself is on an erroneous fact. Hence on this count the petitioner is in advantageous position.

6. The first respondent has filed a counter affidavit stating that the petitioner failed to inspect the site in question before obtaining



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sanction and had failed to bring into the knowledge of the higher officials that the selected project cannot put to use and it would be waste of money. Even though the respondents state so, the respondents accepts that the project was sanctioned by the District Collector. The respondents further submitted that the resolution of Panchayat to carry out the work and approval of estimate cannot justify the action of the petitioner in selecting and recommending the disputed project. The petitioner and the other co-delinquents are the officials who are supposed to select the project. The petitioner ought to have exercised the diligence before selecting the project. If the project is not useful to the people in and around then it would be loss to the Government and the petitioner is having responsibility to report about the true nature of the project. Hence, the disciplinary proceeding was initiated against the delinquents and equal amount was fixed against them. Therefore, the respondent prayed to dismiss the writ petition. This Court is of the considered opinion that this allegation cannot be sustained since the Villagers had submitted a representation to lay the road and along with “varukal”. Therefore, the impugned charge memo needs to be interfered with.

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7. Moreover this Court has already considered the charge memo and other proceedings against the co-delinquents and quashed the charge memo and the recovery order. Therefore, this Court for the reasons stated above is inclined to quash the recovery order as well as the charge memo. Hence, the impugned charge memo and recovery order is quashed. The respondents are directed to implement this order and consider to disburse the consequential monetary benefits, if any within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With the above said direction, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.11.2022

Index : Yes / No
Internet : Yes / No
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To

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Tirunelveli District,
Tirunelveli.
2. The Block Development Officer,
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S.SRIMATHY, J

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Order made in
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