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Writ Petition No.4216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.4216 of 2023
and
W.M.P.Nos.4254 & 10855 of 2023

T.Vimala

...Petitioner

Vs

1.The Director,
Panchayat Raj and Rural Development Department,
Panagal Maligai,
Saidapet, Chennai - 600 015.

2.The District Collector,
Coimbatore District,
Coimbatore.

3.The Assistant Director (Panchayat/Auditor),
Panchayat Raj and Rural Development Department,
Coimbatore, Coimbatore District.

4.The Tahsildar,
Mettupalayam Taluk,
Coimbatore District.

5.The Block Development Officer,
Karamadai Union,
Karamadai Taluk,
Coimbatore District.

... Respondents



Writ Petition No.4216 of 2023

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the proceedings of the fourth respondent in Na.Ka.No.4553/2022/A3 dated 07.02.2023 and quash the same as illegal.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.R.Jayaprakash

For Respondents : Mr.C.Selvaraj
Additional Government Pleader [R1 to R4]
Mr.R.V.Dinesh Raj Kumar
Additional Government Pleader [R5]

ORDER

This writ petition has been filed challenging the proceedings of the fourth respondent in Na.Ka.No.4553/2022/A3, dated 07.02.2023.

2. Heard Mr.R.Singaravelan, learned Senior Counsel appearing for petitioner, Mr.C.Selvaraj, learned Additional Government Pleader appearing for respondents 1 to 4 and Mr.R.V.Dinesh Raj Kumar, learned Additional Government Pleader appearing for fifth respondent.

3. The case of the petitioner is that the petitioner is the President of Chikkadasapalayam Panchayat at Coimbatore District. The second



respondent, viz., the District Collector issued a notice dated 21.03.2022 with three charges against the petitioner. The petitioner submitted her explanation through letter dated 04.04.2022 and denied all the charges. The petitioner also appeared for a personal enquiry before the second respondent on 26.07.2022 and clarified the allegations that were made against her.

4. The grievance of the petitioner is that the second respondent even without complying with the mandatory procedure u/s.205 of the Tamil Nadu Panchayat Act, 1994, [for brevity 'the Act'] had straightaway directed the fourth respondent to convene the meeting u/s.205 of the Act. Apart from the same, the second respondent had also passed orders u/s.203 of the Act by taking away the signing power of the petitioner and the same has been independently challenged in a separate writ petition in W.P.No.27968 of 2022. It is brought to the notice of this Court that this writ petition has already been argued and orders have been reserved.

5. Learned Senior Counsel appearing on behalf of the petitioner mainly pointed out to the violation of mandatory procedure prescribed u/s.205 of the Act. To substantiate his submissions, learned Senior Counsel



Writ Petition No.4216 of 2023

also produced the earlier order passed by this Court in W.P.No.11429 of 2023, dated 17.04.2023. Learned Senior Counsel submitted that this order squarely covers the issue that is involved in the present writ petition.

6. Learned Additional Government Pleader appearing on behalf of the respondents by pointing out the counter filed along with the petition to vacate the interim order, submitted that the explanation given by the petitioner during the enquiry was taken into consideration and pursuant to the same, the second respondent had directed the fourth respondent to conduct the meeting after issuing notice to all the members of the Panchayat council including the petitioner and the meeting was held on 14.03.2023. Learned Additional Government Pleader submitted that there are serious allegations of misappropriation against the petitioner and that there are absolutely no merits in this petition and there is no violation of the mandatory procedure prescribed u/s.205 of the Act.

7. This Court has carefully considered the submissions made on either side and perused the materials available on record.



8. There is no dispute regarding the fact that a show cause notice came to be issued by the second respondent and the petitioner has also given her reply by denying all the charges. Subsequently, a personal enquiry was also conducted by the second respondent. Thereafter, the second respondent has straightaway directed the Tahsildar to conduct the meeting by issuing notice to all the members of the council including the petitioner. This procedure followed by the second respondent is in violation of Section 205(2) of the Act. The procedure to be followed while undertaking the exercise has been explained in the earlier order passed by this Court in W.P.No.11429 of 2023 and for proper appreciation, the relevant portions in the order are extracted hereunder:

"11. Section 205(2) of the Act, specifically provides that if the explanation received from the President is not satisfactory in the opinion of the Inspector of Panchayat viz., the District Collector, it should thereafter be forwarded to the Tahsildar of the concerned Taluk along with the relevant materials and the Tahsildar must ascertain the views of the Village Panchayat on the charges made against the President and the explanation given by the President for those charges. The crux of the dispute in the present case is that the District Collector even without forming an opinion had straightway forwarded the file to the fourth respondent and the fourth respondent had called for a meeting to ascertain the views of the Village Panchayat. That apart, it was also contended that a mere issuance of the notice to the members of the Panchayat will not suffice and they should also be provided with the notice issued by the District Collector, the explanation given by the petitioner along with supporting documents and the opinion formed by the District



WEB COPY



Writ Petition No.4216 of 2023

Collector. It is on these materials, the members of the Panchayat are expected to give their views to proceed further.

12. This Court had an opportunity to deal with a very similar issue in W.P.No.3723 of 2023, referred supra. For proper Appreciation, the relevant portion in the order is extracted hereunder:

7. For initiation of the proceedings or for removal of the President or Vice President, it is for the District Collector to form an opinion either to accept the explanation or reject the explanation. In the event, the explanation is rejected, then he may forward a copy of the notice to the Tahsildar as per Section 205 of the Act along with charges framed against the President or Vice President as the case may be. Without forming an opinion or indicating whether an explanation is accepted or rejected, mere direction cannot be issued to the Tahsildar to ascertain the views. On such receipt of the notice, from the District Collector as per Section 205 (2) of the Act, the Tahsildar shall then convene a meeting for consideration of the notice and explanation, if any and proposal for removal of the President of a Village Panchayat. Besides, the notice of meeting shall be served to the President and all the members of the village panchayat atleast seven days before the date of the meeting and only after complying these provisions, the meeting schedule can go on. Thereafter, the views of the members of the village panchayat can be recorded in the minutes of the meeting and the same can be forwarded to the District Collector by the Tahsildar. These are all the mandatory procedure to be followed before taking any action for removal of the President or Vice President as the case may be. In view of the foregoing discussions, the impugned order, on a perusal, does not fall within any of the procedure contemplated.

13. The materials that are to be supplied for those who are participating in the meeting that is convened while ascertaining their views was dealt with by the Division Bench of this Court in R.Sivasamy case referred supra. For proper appreciation, the relevant portions are extracted hereunder:

7. We have examined the provisions of Section 205 of the Act. We do not find that there is any provision qua supply of the relevant materials, i.e., representation, explanation and opinion for consideration of notice and explanation, before removal of the President in a meeting convened by the Tahsildar under



provision of sub-section (3) of Section 205 of the Act. Supply of requisite material is a pre-condition for considering the case in accordance with the principles of natural justice, as held by the Supreme Court in Ravi Yashwant Bhoir (supra). The appellant/writ petitioner against whose removal, a meeting is to be convened, is entitled to all the relevant materials, as afore stated. The other members are also entitled to the relevant materials for effective and proper consideration and decision.

8. We accordingly direct the Tahsildar, the third respondent herein, that while issuing a notice for convening a requisite meeting of the Panchayat Union, he shall ensure that all the participants, including the elected President, are supplied with the relevant materials on which there is a proposed discussion and a decision is to be taken thereon. To this limited extent, the order passed by the Writ Court is modified.

14. The removal of a duly elected member who is entitled to hold the office for the term for which he is elected, is a very serious matter which has serious repercussions for the person against whom such an action is resorted to. The elected member can be removed in only exceptional circumstances and that to after strict adherence to the statutory provisions. If there is any infraction in following the procedure, this Court exercising its writ jurisdiction will have to interfere with the same so as to ensure that the elected member is removed from office only in accordance with law. The issue with regard to the removal of an elected office bearer was considered by the Apex Court in Ravi Yashwant Bhoir's case referred supra. The Apex Court has made it abundantly clear that an elected office bearer must be put on a higher pedestal and should not be treated like a Government servant. Hence, the strict adherence to the procedure as contemplated under the relevant enactment is a *sine qua non* for initiating proceedings to remove an elected office bearer.

15. In the instant case, after the explanation was given by the petitioner for the notice issued by the second respondent u/s 205 of the Act, on 31.03.2022, there is absolutely no material to show that the Collector had gone through the same and had formed an opinion that the explanation is not satisfactory. The materials available before this Court shows that the second respondent has straightway forwarded the file to the Tahsildar and the Tahsildar has resorted to the procedure for ascertaining the views of the Village Panchayat by



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Writ Petition No.4216 of 2023

issuing the impugned proceedings dated 06.04.2023. This in the considered view of this Court is a clear infraction of Section 205(2) of the Act. That apart, there is no indication in the impugned proceedings that the notice issued by the second respondent and the explanation given by the petitioner along with the relevant documents and opinion formed by the Collector was forwarded to the members whose views are sought to be ascertained. This is yet another infraction that can be ascertained from the impugned proceedings of the fourth respondent."

9. It is clear from the above that the second respondent *viz.*, District Collector ought to have formed an opinion and there is also no record to show that the explanation given by the petitioner along with relevant documents and opinion formed by the Collector was forwarded to the members. The above order cited by learned Senior Counsel squarely applies to the facts of the present case.

10. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the impugned proceedings of the second respondent and accordingly, the same is hereby quashed and the matter is sent back to the second respondent. The second respondent shall follow the proper procedure as indicated in the above order and take further course of action strictly in accordance with the Act.



Writ Petition No.4216 of 2023

This Writ Petition is disposed of in the above terms. No costs.

Consequently, connected miscellaneous petitions are closed.

09.06.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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WEB COPY



Writ Petition No.4216 of 2023

N.ANAND VENKATESH, J

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Writ Petition No.4216 of 2023

09.06.2023