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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.12477 of 2023

G.Karunanithi

Petitioner

vs.

1.The District Collector,
Collectorate Complex,
Mayiladuthurai District.

2.The Assistant Director (Panchayat)
Collectorate Complex,
Mayiladuthurai District.

3.The Block Development Officer,
Office of Panchayat Union,
Sembanarkoil
Mayiladuthurai District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the order passed vide reference Na.Ka.No.2773/2022/A1 dated 13.02.2022 signed as 13.02.2023 passed by the 3rd respondent against the petitioner and quash the same as illegal , arbitrary and ultra vires.

For Petitioner : Mr.S.Giritharan

For Respondents : Mr.S.Mythreye Chandru
Special Government Pleader

**ORDER**

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The issue involved in the present writ petition falls within a narrow campus and hence, the main writ petition itself is taken up for final hearing.

2.This writ petition has been filed by the President of Kazhiyappanallur Panchayat, Mayildaduthurai District assailing the impugned proceedings of the 3rd respondent dated 13.02.2023.

3.The petitioner is the elected President of the Kazhiyappanallur Panchayat at Mayiladuthurai District. A Show Cause Notice dated 28.10.2022 came to be issued to the petitioner by framing certain charges against the petitioner. All the charges pertained to the alleged misappropriation of money. The petitioner gave a reply dated 02.11.2022 explaining/giving his defence for each and every charge that was framed against the petitioner along with relevant documents. The petitioner also took a stand that the Show Cause Notice itself came to be issued only due to a political motive of one Rajbharath who seems to have filed a writ petition before this Court in W.P.No.6313 of 2022 and this writ petition was dismissed with some directions and the directions were taken advantage to issue a Show Cause Notice to the petitioner.



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4.The further case of the petitioner is that the 1st respondent appointed the 2nd respondent to conduct an inquiry and an Inquiry Report was also submitted by the 2nd respondent to the 3rd respondent and the 3rd respondent issued the impugned proceedings dated 13.02.2022 against the petitioner. By virtue of the impugned proceedings, the petitioner was divested from dealing with the funds of the panchayat and this power was vested with the 3rd respondent. The same has become a subject matter of challenge in this writ petition.

5.Heard Mr.S.Giritharan, learned counsel appearing on behalf of the petitioner and Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the respondents.

6.The main grievance that was expressed by the learned counsel for the petitioner is that a hasty action has been taken by the respondents without considering any of the explanation given by the petitioner for the charges framed against him. That apart, the petitioner has complained that the powers under Section 203 of the Tamil Nadu Panchayat Acts, 1994 (hereinafter referred to as "The Act") has been misused and the petitioner has been divested of his power to deal with the funds of the panchayat without affording any opportunity. It was further contended that the powers under Section 203 of the Act is an emergency power which is



mandated only under extraordinary circumstances and whereas, the present case, the very proceedings were initiated on a political motive. The learned counsel in order to substantiate his submission that the entire proceedings have been initiated in a hasty manner, brought to the notice of this Court the Show Cause Notice dated 28.10.2022, wherein it is mentioned that the charges are framed pursuant to the powers under Section 205 of IPC.

7. In the considered view of this Court, there is a glaring mistake in the Show Cause Notice itself wherein it has been mentioned as Section 205 of IPC. Probably, instead of mentioning as Section 205 of the Panchayat Act, by mistake, it has been mentioned as IPC. In any case, the Show Cause Notice has been issued by the Block Development Officer, Sembanarkoil. The petitioner is the President of the panchayat and if at all any proceedings are initiated under Section 205 of the Act, a notice can be given only by the Inspector of Panchayat viz., the District Collector. Whereas, the Block Development Officer has issued such a notice to the petitioner. This is the first major flaw in initiating the proceedings against the petitioner.

8. The petitioner after the receipt of the Show Cause Notice had given this explanation. After the explanation was received, it seems that the 3rd respondent has received a report from the 2nd respondent and based on the same, the impugned proceedings have been issued. If the 3rd respondent had received any report from the



2nd respondent, a copy of the same should have been furnished to the petitioner seeking for his explanation. It should be borne in mind that the petitioner is an elected President and has been given the powers to deal with the finance of the panchayat and consequently, the cheque signing power. When such power is being divested, the same should be done only for a valid reason and that too after following the mandate of the Act. In the present case, everything seems to have been done in a hasty manner.

9.Last but not the least, an innocuous writ petition came to be filed before this Court in W.P.No.6313 of 2022 by one Rajbharath. This writ petition was actually dismissed by this Court and a passing observation was made by this Court to the effect that the District Collector can examine the complaint given by the petitioner and if necessary to take appropriate action. This order has been shown as the reference in the Show Cause Notice that was issued by the 3rd respondent as if a mandatory direction was issued by this Court to initiate proceedings against the petitioner. In any case, if at all any such notice was issued, it should have been done only by the Inspector of Panchayat and not by the Block Development Officer. A cumulative reading of the entire facts shows that the action initiated against the petitioner suffers from illegality and irregularity and it requires the interference of this Court.



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10. In the light of the above discussion, the impugned proceedings of the 3rd respondent in Na.Ka.No.2773/2022/A1 dated 13.02.2022 is hereby quashed. If at all any proceedings are going to be initiated against the petitioner, the same should emanate from the Inspector of Panchayat viz, the District Collector and the District Collector is expected to strictly follow the procedure as mandated under the Act. It goes without saying that the petitioner will be afforded sufficient opportunity if at all any proceedings are going to be initiated.

11. In the result, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

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N. ANAND VENKATESH, J.

SSR

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