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W.P.No.11429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.11429 of 2023
and WMP No.11319 of 2023

P.Rangaraj
The President
Somaiyapalayam Panchayat
Periyanaickenpalayam Union
Coimbatore District.

... 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
Coimbatore North Taluk
Coimbatore District.
5. The Block Development Officer
Periyanaickenpalayam Panchayat Union
Coimbatore, SRKU Post, Coimbatore-641 020.

.. Respondents



W.P.No.11429 of 2023

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the proceedings of the 4th respondent in Na. Ka. No. 6484 / 2022 / Aa1 dated 06.04.2023 and quash the same as illegal and ultravires.

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

For Respondents Mr.J.Ravindran
Additional Advocate General
Asst.by:
Mrs.S.Mythreye Chandru
Special Government Pleader
for R1 to R5
Mr.R.Kumaravel
for R5

ORDER

Considering the limited issue involved in this writ petition, the main writ petition itself is taken up for final hearing on consent given by either side.

2.The President of Somaiyapalayam Panchayat, has questioned the impugned proceedings of the fourth respondent in Na.Ka.No.6484/2022/Aa1 dated 06.04.2023 as illegal and ultravires.

3.The petitioner is the President of Somaiyapalayam Panchayat. The second respondent issued a notice dated 31.03.2022, to the petitioner by pointing out to certain allegations and charges and called for the explanation of the petitioner. The petitioner submitted his explanation through letter dated 18.04.2022.



W.P.No.11429 of 2023

4.The grievance of the petitioner is that the explanation given by him was not even properly considered and the fourth respondent has straightway issued the impugned proceedings dated 06.04.2023, based on the directions issued by the second respondent through notice dated 20.09.2022 and had called for a meeting of the members of the Panchayat on 18.04.2022 at 11.00 am. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Heard Mr.R.Singaravelan, learned Senior Counsel for the petitioner, Mr.J.Ravindran, learned Additional Advocate General for R1 to R4 and Mr.R.Kumaravel, learned Counsel for R5.

6.The learned Senior Counsel appearing on behalf of the petitioner submitted that after the explanation was given by the petitioner on 18.04.2022, it is the duty of the District Collector to consider the explanation and come to a conclusion as to whether the explanation is satisfactory or not. Only after the District Collector comes to an opinion that the explanation is not satisfactory, the further procedure as contemplated u/s 205 (2) of the Tamil Nadu Panchayat Act 1994 (for brevity 'the Act') can be resorted to. According to the learned Senior Counsel, there has been a mandatory violation due to the non-compliance of Section 205(2) of the Act and hence, the impugned proceedings of the fourth respondent dated 06.04.2023, requires the interference of this Court.



W.P.No.11429 of 2023

7.The learned Senior Counsel in order to substantiate his submissions, relied upon the following judgments:

- (a) Ravi Yashwant Bhoir .v District Collector and Others reported in 2012 4 SCC 407
- (b) R.Sivasamy .v District Collector and Others reported in 2015 (3) LW 399
- (c) D.Poornima Rangarajan .v District Collector and Others in W.P.No.3723 of 2023, dated 14.02.2023.

8.Per contra, Mr.J.Ravindran, learned Additional Advocate General appearing on behalf of the respondents after pointing out to the communication of the District Collector dated 20.09.2022, submitted that the District Collector was not satisfied with the explanation given by the petitioner and hence, a direction was given to the Tahsildar, to proceed further for ascertaining the views of the Village Panchayat. Accordingly, the Tahsildar issued the impugned proceedings dated 06.04.2023, calling for the meeting of the Village Panchayat for ascertaining the views of the members. The learned Additional Advocate General further submitted that the issue is now only at the stage of Section 205(2) of the Act and only after ascertaining the views of the Village Panchayat, the further procedure as contemplated from Section 205(3) to 205(11) of the Act, will be followed. Accordingly, the learned Additional Advocate General sought for the dismissal of this writ petition.

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



W.P.No.11429 of 2023

10.The 2nd respondent had issued the notice dated 31.03.2022, to the petitioner who is the President of the Panchayat by framing six charges against him on certain allegations. On receipt of the notice from the 2nd respondent, the petitioner has submitted a detailed reply on 18.04.2022. The petitioner has given his explanation for each charge along with certain annexures to support his defence.

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 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



W.P.No.11429 of 2023

WEB COPY

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



W.P.No.11429 of 2023

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*



W.P.No.11429 of 2023

qua non for initiating proceedings to remove an elected office bearer.

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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 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.

16. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the impugned proceeding of the fourth respondent in Na.Ka.No.6484/2022/Aa1 dated 06.04.2023 and the same is hereby quashed. The matter is sent back to the second respondent and the second respondent shall follow the proper procedure as indicated herein above and shall take further course of action strictly in accordance with the provisions of the Act.



W.P.No.11429 of 2023

WEB COPY

17.In the result, this writ petition is allowed in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

17.04.2023

KP

Internet : Yes

Index : Yes

Speaking Order:Yes/No

Neutral Citation :Yes

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WEB COPY



W.P.No.11429 of 2023

N.ANAND VENKATESH, J.

KP

W.P.No.11429 of 2023

17.04.2023