



Writ Petition No.17513 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.17513 of 2023

and

W.M.P.Nos.16650 & 16651 of 2023

A.C.Ramachandran
S/o.Chinnasamy

...Petitioner

Vs

1.The District Collector,
Chengalpet - 603 001.

2.The Block Development Officer,
Thiruporur - 603 110.

3.The Tahsildar.
Thiruporur - 603 110.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned order of the first respondent viz proceedings dated 02.06.2023 in Na.Ka.No.404/2022/A5 published in the Tamil Nadu Government Gazette dated 02.06.2023 and quash the same.



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For Petitioner : Mrs.A.L.Ganthimathi, Senior Counsel
for Mr.L.Palani Muthu

For Respondents : Mr.C.Selvaraj
Additional Government Pleader [R1 &R3]
Mr.R.Kumaravel
Additional Government Pleader [R2]

ORDER

The issue involved in the present writ petition is squarely covered by the earlier order passed by this Court in W.P.No.11429 of 2023 and hence, the main writ petition itself is taken up for final hearing.

2. The petitioner, who is the President of Alathur Village Panchayat has challenged the impugned proceedings of the first respondent dated 02.06.2023 published in the Tamil Nadu Government Gazette on 02.06.2023, whereby the petitioner was removed from the post of President of the Village Panchayat.

3. The election was conducted during October'2021 and the petitioner was elected as the President of the Alathur Village Panchayat on 20.10.2021. The specific case of the petitioner is that even before the petitioner assumed office, the Special Officer and the Panchayat Secretary



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had withdrawn funds from the Panchayat account even when the Code of Conduct was in force. A total sum of Rs.26,74,902/- was withdrawn by them. Immediately after the petitioner assumed office, he directed the account books and the relevant records to be placed before him. The petitioner found that no contract was executed or no work was allotted and in spite of the same, amounts have been withdrawn and there was complete mismanagement of funds. The petitioner was making various representations to secure the Books of Accounts and the relevant records. Since none of the records were handed over, the petitioner filed a writ petition before this Court in W.P.No.10451 of 2022 for a direction to handover the Books of Accounts and other records. When this writ petition was pending, the first respondent issued a show cause notice u/s.205(1)(a) of the Tamil Nadu Panchayat Act, 1994, [for brevity 'the Act'] alleging that four ward members had given a complaint against the petitioner. Through proceedings dated 10.11.2022, the first respondent also suspended the operation of the accounts of the Panchayat until further orders. This proceedings was put to challenge by the petitioner by filing W.P.No.2801 of 2023. That apart, the petitioner also filed W.P.No.125 of 2023 challenging the notice issued to the petitioner u/s.205 of the Act.



4. All the three writ petitions were taken up for hearing by this Court.

Insofar W.P.No.2801 of 2023 is concerned, the same was allowed by order dated 24.02.2023 and the impugned proceedings dated 10.11.2022 suspending the operation of the accounts was set aside and the first respondent was directed to restore the power of operation of accounts of the Panchayat by the petitioner.

5. Insofar W.P.No.125 of 2023 is concerned, this Writ Petition was also disposed of on 24.02.2023 in the following terms:

"3. The charges against the petitioner mainly relate to non furnishing of the accounts. It is an undisputed fact that the petitioner took charge as the President of the Panchayat on 20.10.2021. The apprehension of the petitioner is that the amount has been withdrawn by the Special Officer and Panchayat's Secretary during the period when the election code was in force and there was some misappropriation by the officials. In such view of the matter, the Collector has to decide the issue on considering the entire allegations and if he is satisfied with the explanation given by the petitioner, he shall close the proceedings."

6. Insofar W.P.No.10451 of 2022 is concerned, the same was disposed of on 24.02.2023 in the following terms:

"2. The case of the petitioner is that the Panchayat Union Special Officer and the Panchayat Secretary in collusion and in connivance with the third parties withdrawn the panchayat funds without execution of any work during the enforcement of model



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code of conduct for local body election in Tamilnadu. It is the further contention of the petitioner that even after the petitioner assumed charge as the President, the ledger and books have not been handed over to the petitioner. Hence, the petitioner has filed this Writ Petition to conduct enquiry as to the management of funds during the enforcement of model code of conduct for local body election.

3. The learned Additional Government Pleader appearing for the respondents submitted that they will furnish copies of accounts to the petitioner within a period of two weeks.

4. The submission of the learned Government Advocate is recorded. The first respondent shall furnish the copies of the accounts to the petitioner within a period of two weeks from the date of receipt of a copy of this Order. Similarly, the petitioner is also directed to provide accounts for the rest of the period to the first respondent."

7. The grievance of the petitioner is that this Court while disposing of W.P.No.125 of 2023, made it clear that the first respondent must decide the issue of considering the entire allegations and if satisfied by the explanation given by the petitioner, the proceedings must be closed. However, the first respondent straightaway proceeded to issue directions to the third respondent to call for a meeting and accordingly, the third respondent issued a notice on 26.04.2023 calling for a meeting to be held on 09.05.2023. Pursuant to the same, the impugned proceedings of the first respondent came to be issued and it was also published in the Gazette and thereby, the petitioner was removed from the post of President of the Village Panchayat.



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Aggrieved by the same, the present writ petition has been filed before this Court.

8. Heard Mrs.A.L.Ganthimathi, learned Senior Counsel appearing for petitioner, Mr.C.Selvaraj, learned Additional Government Pleader appearing for respondents 1 and 3 and Mr.R.Kumaravel, learned Additional Government Pleader appearing for the second respondent.

9. The main grievance that was expressed by learned Senior Counsel appearing on behalf of the petitioner was that the entire allegations pertain to misappropriation/mismanagement of the funds belonging to the Panchayat even before the petitioner took charge of the Panchayat as President. The petitioner was requesting for relevant records and account books and the same were not furnished. In the mean time, based on some complaint, the first respondent proceeded to initiate proceedings u/s.205 of the Act. The first respondent also suspended the operation of the accounts of the Panchayat. This Court while disposing of those writ petitions had interfered with the order passed by the first respondent suspending the operation of the accounts of the Village Panchayat. There was also a



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direction to furnish the account books and the relevant records to the petitioner. That apart, this Court also specifically directed the first respondent to get explanation from the petitioner and thereafter, proceed further in accordance with law. In spite of such directions issued by this Court, the first respondent has straightaway directed the third respondent to convene the meeting and consequently, the impugned proceedings have been issued by the first respondent removing the petitioner from the post of President of Village Panchayat.

10. In the considered view of this Court, the entire proceedings has proceeded in a very hasty manner without following the mandatory procedure prescribed u/s.205(4) of the Act. The manner in which the third respondent had issued the notice calling for the meeting is in complete violation of the procedure. This issue was dealt with in detail in W.P.No.11429 of 2023, dated 17.04.2023 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



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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 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.



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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.



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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."

11. The facts of the present case is squarely covered by the above order and it is seen that the mandatory procedure u/s.205(4) of the Act has not been complied with. This is apart from the fact that the direction issued by this Court to furnish the relevant records and account books to the petitioner and for taking further explanation of the petitioner, has not been complied with. As a result, the proceedings of the first respondent removing the petitioner from his post as President suffers from apparent illegality and manifest arbitrariness. Hence, the same is liable to be interfered by this Court.



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12. In the result, the impugned proceedings of the first respondent in Na.Ka.No.404/2022/A5, dated 02.06.2023 and the consequent publication in the Tamil Nadu Government Gazette dated 02.06.2023, are hereby quashed. The matter is remitted back to the first respondent. The first respondent shall take into account the directions issued by this Court in the above writ petitions. That apart, the first respondent shall strictly comply with the procedure u/s.205(4) of the Act as explained by this Court in the judgment referred supra. Ultimately, if the first respondent is satisfied with the explanation given by the petitioner, the proceedings can be closed and if the first respondent is not satisfied with the explanation, the procedure u/s.205(4) of the Act shall be complied with before the meeting is convened. It goes without saying that the other procedures as mandated upto Section 205(10) of the Act shall also be followed.

This Writ Petition is allowed in the above terms. No costs.
Consequently, connected miscellaneous petitions are closed.

13.06.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
gm



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N.ANAND VENKATESH, J

gm

To

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