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W.P.No.25778 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2023

PRONOUNCED ON : 04.10.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.25778 of 2023
and
W.M.P.No.25205 of 2023

M.Bala

... Petitioner

VS.

- 1.The Inspector of Panchayat/
The District Collector
Thiruvannamalai District
Thiruvannamalai
- 2.The Assistant Director of Panchayat (Panchayats)
Thiruvannamalai District
Thiruvannamalai
- 3.The Block Development Officer
Vengikkal Panchayat
Thiruvannamalai Union
Thiruvannamalai Panchayat
- 4.The Thasildar
Thiruvannamalai Taluk Office
Thiruvannamalai



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5. Mrs. T. Shanthi
President of Vengikkal Panchayat
Thiruvannamalai Panchayat Union
Thiruvannamalai
Thiruvannamalai District

... Respondents

PRAYER: Writ Petition is filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the Impugned order in A1/6383/2022 dated 31.07.2023 of the 4th respondent herein and quash the same.

For Petitioner : Mr. Naveen Kumar Murthy
for Mr. R. Silambarasan

For R1, R2 and R4 : Mr. P. Anandhakumar
Government Advocate

For R3 : M/s. Geetha Thamarai Selvan
Special Government Pleader

ORDER

The writ petition is filed challenging the notice issued by 4th respondent convening the meeting of Vengikkal Village Panchayat for consideration of 'No Confidence Motion' against the petitioner namely the Vice President of the Panchayat on 05.09.2023.



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2. The petitioner is the elected Vice President of the above said Panchayat. According to the petitioner, all the Ward Members of the Vengikkal Village Panchayat except 6th Ward Member written a letter to the 4th respondent stating as if, the petitioner was not co-operating with the President of the Panchayat to carry out affairs of the Panchayat and requested the 4th respondent to move a 'No Confidence Motion' against the petitioner. Pursuant to the same, the 4th respondent issued a show cause notice to the petitioner on 28.07.2023 calling upon her to submit an explanation with regard to the allegations against the petitioner. The said notice said to have been received by petitioner on 31.07.2023. The petitioner submitted a detailed explanation to the 4th respondent on 05.08.2023 denying allegations against her. Simultaneously, the 4th respondent also issued the impugned notice calling the petitioner as well as other Ward Members of the Panchayat to attend the meeting on 05.09.2023 for consideration of 'No Confidence Motion' against the petitioner. Aggrieved by the same, the petitioner is before this Court.

3. Mr.Naveen Kumar Murthy, learned counsel representing Mr.R.Silambarasan, learned counsel for the petitioner submitted that under



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Section 211 (3) and (4) of the Tamil Nadu Panchayats Act, 1994

(hereinafter referred to as the 'Panchayats Act' for brevity) on receipt of written representation of the required number of Members of Panchayat of their intention to move 'No Confidence Motion' against the Vice President, the 4th respondent shall serve the copy of the statement of charges against the Vice President along with notice of meeting and require the Vice President to give her reply to the charges within a week from the date of receipt of notice. After expiry of the period of notice, the 4th respondent is expected to convene a meeting for consideration of the motion, at the Office of the Village Panchayat. In the case on hand, the show cause notice of the 4th respondent dated 28.07.2023 was served on the petitioner only on 31.07.2023 and simultaneously, on the very same day, the impugned notice has been issued by the 4th respondent convening the meeting of the Panchayat without waiting for expiry of 7 days period as contemplated under Section 211 (4) of the Panchayats Act. Therefore, the impugned notice issued by the 4th respondent is a clear violation of the procedure contemplated under Section 211 (3) read with Sub Section 4 of the Panchayats Act. The learned counsel further submitted that the meeting convened by the 4th respondent before expiry of 7 days for submitting the



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explanation to the show cause notice is bad in law. The learned counsel by taking this Court to Sections 205, 206 and 212 of the Panchayats Act, submitted that in all these provisions legislature made its intention clear that meeting shall be convened only after receipt of explanation to the show cause notice by employing the word “then”. However, in Section 211 Sub Section 4, the word “then” is conspicuous by its absence and the 4th respondent cannot take advantage of the same and convene the meeting even before expiry of the time for submitting reply to the charges.

4. In other words, the learned counsel submitted that the word then used in Sections 205 (3) and 212 (4) shall be imported into Section 211 (4) of the Panchayats Act and the same shall be interpreted accordingly. In support of his contention, the learned counsel relied on the orders of this Court in *S.Dhanalakshmi vs. The District Collector/Inspector of Panchayat, Dindigul and others* in W.A.(MD).No.786 of 2021, dated 09.04.2021, *D.Chandrasekar vs. District Collector, Thiruvallur District, Thiruvallur and others* reported in *2011-5-L.W. 187* and *K.Muniappan vs. Tahsildhar, Thiruvallur Taluk* in W.P.No.33027 of 2015, dated 07.12.2015.



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5. Mr.P.Anandhakumar, learned Government Advocate appearing for the respondents 1, 2 and 4 and M/s.Geetha Thamarai Selvan, learned Special Government Pleader appearing for the 3rd respondent submitted that the impugned notice was dated 31.07.2023 convening the meeting for consideration of 'No Confidence Motion' on 05.09.2023. Therefore, there is more fifteen clear days notice as per the provisions of Section 211 (5) of the Panchayats Act. As far as the contention of the learned counsel for the petitioner that convening of the meeting before expiry of 7 days period for submitting explanation as per Section 211 (3) of the Panchayats Act is concerned, the learned Government Advocate submitted that mere procedure irregularity will not give any right to the petitioner.

6. The procedure for moving 'No Confidence Motion' against the Vice President of the Panchayat is laid down under Section 211 of the Panchayats Act, which reads as follows:-

“211. Motion of no confidence in Vice-President of Village Panchayat.- (1) Subject to the provisions of this section, a motion expressing want of confidence in the Vice President of a Village Panchayat may be made in accordance with the procedure laid down herein.



(2) *Written notice of intention to make the motion, signed by members of the Village Panchayat not less in number than three-fifth of the sanctioned strength of the Village Panchayat, together with a copy of the motion which is proposed to be made and a written statement of the charges against the Vice President, shall be delivered in person to the Tahsildar of the Taluk by any two of the members of the Village Panchayat signing the notice.*

(3) *A copy of the statement of charges alongwith the notice of the meeting shall be caused to be delivered to the Vice-President concerned by the Tahsildar and the Vice-President shall be required to give a statement in reply to the charges within a week of the receipt of the notice by the Vice-President.*

(4) *The Tahsildar shall, after the expiry of the period of the notice issued under sub-section (3), convene a meeting for the consideration of the motion, at the office of the Village Panchayat at a time appointed by him.*

(5) *The Tahsildar shall give to the members notice of not less than fifteen clear days of such meeting and of the time appointed therefor.*

(6) *The Tahsildar shall preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour after the time appointed for the meeting,*



the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members by the Tahsildar under subsection (7).

(7) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall not be later than thirty days from the date appointed for the meeting under subsection (4). Notice of not less than seven clear days shall be given to the members, of the time appointed for the adjourned meeting.

(8) Save as provided in sub-sections (6) and (7), a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned.

(9) As soon as the meeting convened under this section has commenced, the Tahsildar shall read to the Village Panchayat, the motion for the consideration of which it has been convened, the statement of charges and the written statement, if any, of the Vice-President in reply to the said charges.

(10) There shall be no debate on any motion under this section.

(11) The Tahsildar shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.



(12) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(13) If the motion is carried with the support of not less than [four-fifth] of the sanctioned strength of the Village Panchayat, the Inspector shall, by notification, remove the Vice-President of the Village Panchayat.

(14) If the motion is not carried by such a majority as aforesaid, or if the meeting cannot be held for want of the quorum referred to in sub-section (13), no notice of any subsequent motion expressing want of confidence in the same Vice-President shall be received until after the expiry of [one year] from the date of the meeting.

[(15) No notice of a motion under this section shall be received,-

(i) within one year of the assumption of office by;

or

(ii) during the last year of the term of office of, a Vice-President].”

7. A close scanning of above provisions would suggest that the proceeding for moving 'No Confidence Motion' against the Vice President of



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Panchayat shall be initiated by written notice of intention to move such motion by not less than three-fifth of the sanctioned strength of the Village Panchayat. The said written notice shall be accompanied by statement of charges made against the Vice President. The written notice of intention to move the motion together with charges shall be delivered in person to the Tahsildar of the Taluk by two of the Members of the Taluk. Thereafter, the Tahsildar is required to serve copy of statement of charges along with notice of meeting to the Vice President concerned and she shall be required to submit her explanation to the charges within a week from the date of receipt of such notice by Tahsildar. The Tahsildar is required to convene a meeting of Panchayat for consideration of motion of no confidence after expiry of period for submission of explanation by Vice President.

8. The meeting of Panchayat shall be convened with clear 15 days notice to all the Members. The procedure to be followed thereafter are contained in Sub Sections 6 to 15 of Section 211 of the Panchayats Act and we are not concerned with the same in the writ petition. The issue arising for consideration in this writ petition is to be answered by harmonious construction of Sub Section 3 and 4 of Section 211 of the Panchayats Act.

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9. A reading of Section 211 (3) of the Panchayats Act would make it clear that after receipt of written notice of intention to move 'No Confidence Motion' by required number of Members of Panchayat under Section 211 Sub Section 2 of the Panchayats Act, the Tahsildar shall give a notice to the Vice President calling upon him to submit his explanation for the charges within a week (7 days). Such a communication of the Tahsildar shall be accompanied by copy of the statement of charges along with notice of meeting.

10. A perusal of notice issued by 4th respondent/Tahsildar dated 28.07.2023 to the petitioner would make it clear that under the notice the petitioner was directed to submit her explanation within 7 days for the charges made against her. The notice is accompanied by letter submitted by 11 out of 12 Ward Members of the Panchayat along with copy of the motion to be moved and signed by such Members and copy of 18 charges made against the petitioner, signed by 11 Members. Sub Section 3 of Section 211 of the Panchayats Act also stipulates that the notice calling for explanation shall be accompanied by notice of meeting. Therefore, the 4th respondent



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rightly issued impugned notice simultaneously calling for meeting of Panchayat on 05.09.2023 at 11.00 a.m for consideration of 'No Confidence Motion'.

11. The main contention of the learned counsel appearing for the petitioner is that when Section 211 (4) of the Panchayats Act, stipulates Tahsildar shall convene a meeting for consideration of 'No Confidence Motion' after expiry of the period stipulated in the show cause notice referred to in Sub Section 3 of Section 211 of the Panchayats Act, the 4th respondent ought not to have issued impugned notice before expiry of that period.

12. Sub Section 3 of Section 211 of the Panchayats Act, stipulates the notice issued by Tahsildar calling for explanation from the Vice President for the charges against her shall be accompanied by statement of charges made against her along with notice of meeting. Therefore, there is nothing wrong in 4th respondent/Tahsildar issuing a simultaneous notice on 31.07.2023 calling for meeting on 05.09.2023 for consideration of 'No Confidence Motion'. In other words, such a notice is statutory requirement under Section 211 Sub Section 3 of the Panchayats Act.



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13. Though the learned counsel appearing for the petitioner submitted that by relying on Section 211 (4) of the Panchayats Act, such notice can be issued by the Tahsildar only after expiry of period of 7 days stipulated under Section 211 Sub Section 3 of the said Act, the said contention is not acceptable to this Court for the following reason.

14. Section 211 (4) of the Panchayats Act only mandates meeting shall be convened by the Tahsildar after expiry of 7 days notice stipulated under Sub Section 3 of Section 211 of the said Act. Further, there shall be a clear fifteen days notice of such meeting. When Section 211 Sub Section 3 of the Panchayats Act, stipulates communication of the Tahsildar calling for explanation shall be accompanied by statement of charges along with notice of meeting, the Tahsildar is expected to take into consideration the time limit stipulated in Section 211 Sub Section 4 also and fix the date of meeting after 22 days (7 days under Section 211 (3) and 15 days under Section 211 (5)).

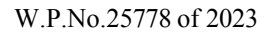
15. It may not be possible for Tahsildar to serve notice of meeting without indicating the date and timing of meeting. If the contention made by



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the learned counsel appearing for the petitioner that the Tahsildar shall issue notice convening the meeting for consideration of the motion of no confidence only after expiry of the period mentioned under Section 211 Sub Section 3 of the Panchayats Act, is accepted, it may not be possible for Tahsildar to serve 'Notice of Meeting' along with his communication calling for explanation as mandated by Section 211 (3) of the Panchayats Act,

16. If notice of Tahsildar convening the meeting is issued after expiry of 7 days period as contented by the learned counsel for the petitioner, then, the communication of Tahsildar under Section 211 Sub Section 3 of Panchayats Act, will be attacked on the ground it was not accompanied by notice of meeting. Therefore, when simultaneous notice of meeting is issued by Tahsildar on 31.07.2023 fixing 05.09.2023 as a date for convening the meeting by taking into consideration the time limit prescribed under Section 211 (3) and (5) of the Panchayats Act, the petitioner is not entitled to assail the same as if, it is violation of Section 211 (4) of the Panchayats Act. If both the provisions namely Sub Section 3 and 4 of Section 211 of the Panchayats Act, are construed harmoniously, I do not find any infirmity in issuing simultaneous notice on 31.07.2023 for convening meeting on



17. The learned counsel appearing for the petitioner submitted that Sub Section 4 of Section 211 of the Panchayats Act, employed the word shall and therefore, the Tahsildar cannot convene the meeting before expiry of the period stipulated under Sub Section 3 of Section 211 of the said Act. First of all, the word shall employed under Sub Section 4 of Section 211 is with reference to mandate to convene the meeting for consideration of motion of no confidence. It cannot be taken as with reference to the issue of notice for convening meeting. It only indicates meeting shall be convened after expiry of the statutory period mentioned under Sub Section 3. However, it does not mean notice for convening the meeting itself shall be issued after expiry of that period. Therefore, if Sub Sections 3 and 4 of Section 211 of the Panchayats Act are harmoniously construed, I do not find any infirmity in the notice issued by Tahsildar on 31.07.2023 before expiry of 7 days as stipulated under Section 211 Sub Section 3 of the Panchayats Act, especially when the meeting is scheduled to be held on 05.09.2023 well after expiry of 7 days as stipulated under Sub Section 3 and 15 days as stipulated under Sub Section 5.



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18. Even assuming the contention of the learned counsel appearing for the petitioner is accepted and impugned notice issued by Tahsildar before expiry of 7 days period is a violation of Section 211 Sub Section 4 of the Panchayats Act, mere violation of procedure will not entitle the petitioner to challenge the impugned notice unless she is able to show prejudice.

19. In the case on hand, as per Sub Section 3 of Section 211 of the Panchayats Act, the petitioner was called upon to submit her explanation for the charges against her and she also submitted her explanation to Tahsildar on 05.08.2023. Under the scheme of Section 211 of Panchayats Act, neither the 4th respondent/Tahsildar nor the Inspector of Panchayat namely the 1st respondent are empowered to consider the explanation offered by the petitioner. The explanation offered by the petitioner has to be considered only by the Panchayat in its meeting convened by the 4th respondent.

20. In other words, the Tahsildar merely acts as a postman in forwarding the explanation submitted by the petitioner to Panchayat for



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consideration. The same can be gathered from Section 211 Sub Section 9 of

Panchayats Act, which reads as follows:-

“211.(9) As soon as the meeting convened under this section has commenced, the Tahsildar shall read to the Village Panchayat, the motion for the consideration of which it has been convened, the statement of charges and the written statement, if any, of the Vice-President in reply to the said charges.”

21. Therefore, merely because, Tahsildar issued a notice before expiry of 7 days as stipulated under Section 211 (4) of the Panchayats Act, no prejudice is caused to the petitioner. Pursuant to the notice issued by the Tahsildar under Section 211 (3) of the Panchayats Act, petitioner submitted her explanation on 05.08.2023 and the same will be considered in the meeting to be held on 05.09.2023 well after the period stipulated by the statute. Neither the 4th respondent nor the 1st respondent is empowered to consider the explanation of the petitioner and drop the proceedings. In view of the employment of word shall in Section 211 Sub Section 4, there shall be a meeting after expiry of time limit stipulated for considering explanation offered by the petitioner and her explanation if any, shall be considered in



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the meeting.

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22. In the case on hand, the petitioner submitted her explanation on 05.08.2023 and the same will be considered in the meeting scheduled to be held on 05.09.2023. Therefore, by issue of notice of meeting, which is impugned in this writ petition, the petitioner is not at all affected or prejudiced in any way, when her explanation is likely to be considered by the competent authority namely the Panchayat in its meeting scheduled to be held on 05.09.2023. When petitioner is not able to show any prejudice by impugned notice, the contention raised by the petitioner that impugned notice is liable to be set aside as the same was issued before expiry of the period stipulated under Section 211 Sub Section 3 of the Panchayats Act is also not acceptable to this Court. Mere procedural violation which is not causing any prejudice to the petitioner cannot be a ground to assail the impugned notice.

23. In view of the discussions made earlier, the orders relied on by the learned counsel for the petitioner in support of his contention are not helpful to advance petitioner's case, especially when there is no provision under the scheme of Section 211 of the Panchayats Act, enabling either the District



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Collector or the Tahsildar to consider the explanation offered by the petitioner on merits.

24. Though in the judgment of this Court in *S.Dhanalakshmi vs. The District Collector/Inspector of Panchayat, Dindigul District* in W.A.(MD).No.786 of 2021, dated 09.04.2021 relied on by the learned counsel for the petitioner, this Court held issue of simultaneous notice calling for meeting of Panchayat is bad on the ground that explanation offered by the Vice President in response to the notice shall be considered by the District Collector and upon his dissatisfaction, he shall record the same and direct the Tahsildar to convene a meeting of Panchayat to discuss the resolution regarding 'No Confidence Motion', I do not find any enabling provision in Section 211 of the Panchayats Act, empowering the District Collector to consider the explanation offered by the Vice President. Under the scheme of Section 211, whether Vice President offered his explanation or not, Tahsildar is bound to convene meeting of Panchayat for consideration of 'No Confidence Motion'. If explanation is offered by the Vice President, the same shall also be read over in the meeting convened by the Tahsildar and Panchayat has to consider the same. The procedure



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referred in the said judgment, namely consideration of explanation offered by President or Vice President, as the case may be, by District Collector is available under Sections 205 and 206 of Panchayat Act, which is relating to power of District Collector (Inspector of Panchayat) to remove President or Vice President, as the case may be, in case of their wilful omission or refusal to carry out any provision of Panchayat Act. The said procedure is not available under Section 211 of Panchayat Act which deals with power of Panchayat to express no confidence against Vice President. In the absence of any enabling provision empowering District Collector to consider the explanation offered by Vice President, the decision relied on by the learned counsel for the petitioner will not advance his case. Therefore, I do not find any reason to interfere with the impugned communication of the 4th respondent calling for meeting of the Panchayat for consideration of 'No Confidence Motion' against the petitioner.

25. Accordingly, the Writ Petition is dismissed. At this juncture, learned Government Advocate appearing for respondents 1, 2 and 4 submitted that on 05.09.2023 meeting of Village Panchayat was convened and no confidence motion had been passed against the petitioner. It is open

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to the respondents to proceed in accordance with law as per the decision

taken in the meeting that was convened on 05.09.2023. No costs.

Consequently, the connected miscellaneous petition is closed.

04.10.2023

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

- 1.The Inspector of Panchayat/
The District Collector
Thiruvannamalai District
Thiruvannamalai
- 2.The Assistant Director of Panchayat (Panchayats)
Thiruvannamalai District
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S.SOUNTHAR, J.

dm

**Pre-delivery order made
in W.P.No.25778 of 2023**

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