



W.P. No. 30243 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30243 of 2022

and

W.M.P. No. 29673 of 2022

Palayanur Panchayat,
Represented by President,
Durgadevi Venkatesan

... Petitioner

-VS-

1. The District Collector/Inspector of Panchayat,
Tiruvannamalai District,
Tiruvannamalai – 606604.

2. Block Development Officer, (VP),
Block Development Office,
Vengikkal,
Tiruvannamalai District – 606604.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First and Second Respondents to cancel the illegal allotment of MGNERGS Scheme works pertaining to Palayanur Panchayat to private contractors and to ensure allotment of all the said works to Palayanur Village Panchayat and to ensure that the passwords of all the Bank Accounts pertaining to Palayanur Village Panchayat are informed to the Secretary of the Petitioner and the Petitioner is allowed to function in a free and fair manner without being subjected to any hostile discrimination or victimization.



W.P. No. 30243 of 2022

WEB COPY

For Petitioner : Mr. M.Ravi

For Respondents : Mr. U.Baranidharan,
Additional Government Pleader (for R1)

Mr. Edwin Prabhakar,
Additional Government Pleader (for R2)

ORDER

Heard Mr. M.Ravi, Learned Counsel for the Petitioner, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First Respondent and Mr. Edwin Prabhakar, Learned Additional Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., Palayanur Panchayat, is a body corporate as per Section 6(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), and has been described to be represented by its President, viz., Durgadevi Venkatesan. The grievance ventilated in this Writ Petition is that the various works under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) have been awarded to private contractors by the Second Respondent in violation of the guidelines of that scheme, and that



W.P. No. 30243 of 2022

the operation of the bank accounts by the President and the Secretary of the Village Panchayat has been blocked and their passwords have been changed by the Second Respondent without any authority of law.

3. In response, Learned Additional Government Pleader appearing for the Respondents refers to the Counter-Affidavit dated 06.01.2023 filed by the Second Respondent, where it has been stated as follows:-

9. This Second Respondent submits that the Guidelines for undertaking various Infra-structure facilities works under MGNREGS issued vide G.O. (Ms) No. 34, Rural Development and Panchayat Raj (CGS.1) Department dated 04.03.2014. In the said G.O., it is clearly stated that the Village Panchayats will be the implementing authority for construction of infra-structure facilities for individual beneficiaries. The Block Development Officer (Village Panchayats) shall be the implementing officer and responsible for carrying out the common infra-structure facilities for the community. The construction of infra-structure facilities for common purposes shall be entrusted to Block Development Officer and the work order shall be issued in the



WEB COPY

name of Panchayat Secretary/Road Inspector or any other officer nominated by the District Collector from time to time. Accordingly, no contractors are permitted in Mahatma Gandhi National Rural Employment Guarantee Scheme, all the construction work order issued in the name of the Panchayat Secretary and no contractors engaged.

10. This Second Respondent submits that vide proceedings of the First Respondent in Proceedings No. 2254/2021/A17 dated 10.08.2021 administrative sanction has been given for providing Cement Concrete Pavement at Burial Ground, Duruvan Habitation at Palayanoor to an extent of 125 meter at the estimated cost of Rs. 4.61 Lakhs and work order has been issued in the name of the Panchayat Secretary by this Second Respondent vide Na. Ka. No. 1715/2021/௨௪௮2 dated 30.09.2021 and vide proceedings of the First Respondent in Proceedings No. 2254/2021/A17 dated 11.02.2022 administrative sanction has been given for providing Cement Concrete Pavement from Muppanar Kovil to Vannarpari at Palayanoor Village Panchayat to an extent of 252 meter at the estimated cost of Rs. 9.75 Lakhs and work order has been issued in the name of the Panchayat



WEB COPY

Secretary by this Second Respondent vide Na. Ka. No. 1715/2021/ஊஅ2 dated 18.02.2022 and further vide Proceedings of the First Respondent in Proceedings No. 2254/2021/A17 dated 18.06.2022 administrative sanction has been given the providing Cement Concrete Pavement at P.Valasai in Palayanoor Village Panchayat to an extent of 150 meter at the estimated cost of Rs. 5.86 Lakhs and work order by this Second Respondent vide Na. Ka. No. 1715/2021/ஊஅ2 dated 27.06.2022 all the works has been done by following the procedures laid in the Government Orders, there is no violation at all. There is no work entrusted in the name of the private contractors as if mentioned in the affidavit for the work and there is no work undertaken for the work of Palayanoor Nadu Theur Drainage.

11. This Second Respondent submits that while verification of expenditure, it was revealed that the Government money was paid without any tender procedure as well as the guidelines framed by the State Government vide the G.O. Ms. No. 60, Rural Development and Panchayat Raj Department dated 16.04.2015. Further, without any sub vouchers, M.Book and Block Development Officer's Cheque memo and the amount illegally



WEB COPY

paid to the private companies.

12. This Second Respondent submits that the Assistant Director of Rural Development (Audit), Tiruvannamalai has auditing the Petitioner Village Panchayat and submitted his report vide Na. Ka. No. 2308/2022/அ5 dated 28.11.2022 and found that there is a huge amount of money is misappropriated by the Petitioner in his Village Panchayat without following the procedure laid down in various Government Orders for the Village Panchayat Account No. 1, 3, 5 and 9.

13. This Second Respondent submits that the Assistant Director of Rural Development (Audit), Tiruvannamalai has auditing the Petitioner Village Panchayat and submitted his report from 01.04.2021 to 31.03.2022 and 01.04.2022 to 05.11.2022 vide Na. Ka. No. 2308/2022/அ5 dated 28.11.2022 in which it is found that

1. the Petitioner has misappropriated a sum of Rs. 8,72,340/- in Account No. 1 of the Village Panchayat and
2. a sum of Rs. 7,78,000/- has been illegally disbursed from Account No. 3 of the Village Panchayat without cheque memo of this Second Respondent and



WEB COPY



W.P. No. 30243 of 2022

3. a sum of Rs. 23,89,670/- has been illegally disbursed from Account No. 5 of the Village Panchayat and
4. a sum of Rs. 66,21,587/- has been illegally disbursed from Account No. 9 of the Village Panchayat through Cheque and whereas the payment through Cheque has been restricted by the Government.

All the said expenditure has been done for the year of 2021-2022 (i.e., from 01.04.2021 to 31.03.2022), whereas the Petitioner did not any sub vouchers, Measurement books, Cheque Memo, Technical Sanction and Administrative Sanction has not obtained from the officers concerned therein and proper Registers also not entered and maintained for the said expenditures.

1. A sum of Rs. 11,16,285.40 has been illegally distributed from Account No. 1 of the Village Panchayat and
2. A sum of Rs. 2,55,738/- has been illegally distributed from Account No. 5 of the Village Panchayat and
3. A sum of Rs. 44,79,979/- has been illegally distributed from Account No. 9 of the Village Panchayat.



WEB COPY

The Petitioner did not submit any records with respect to the above expenditures for the period of 01.04.2022 to 05.11.2022. Hence the Assistant Director of Rural Development (Audits), Tiruvannamalai did not able to find out the real expenditure and further for the expenditure of 01.04.2022 to 05.11.2022.

14. This Second Respondent submits that the Petitioner misappropriated a huge sum of Rs. 1,65,13,699/- Village Panchayat funds from 01.04.2021 to 05.11.2022 without maintaining any Vouchers, Estimates, Tender documents and Measurement Books in the Village Panchayat Accounts and also did not follow any of the Government instructions in G.O. Ms. No. G.O. (Ms) No. 286, Rural Development (CSS-I) Department dated 31.12.1998 and G.O. (Ms) No. 203, Rural Development & Panchayat Raj Department dated 20.12.2007 in the conduct of the Village Panchayat Administration.

15. This Second Respondent submits that in order to bring transparency in financial transactions in the local body accounts, an online accounting system is being planned by the Department as per G.O. (Ms) No. 133, Rural Development and Panchayat Raj



WEB COPY

(PR-1) Department 18.09.2018, the disbursement of amount made to the beneficiaries, vendors through Public Financial Management System only except Account No. 2 of the Village Panchayat but the Petitioner used the cheque leaves for disbursement of amount instead of PFMS by violating the said Government Order.

16. This Second Respondent submits that in order to avoid further misappropriation, this Second Respondent sent a letter to the concerned bank vide Na. Ka. No. ஊஅ3/182/2021 dated 13.10.2022 to freeze the accounts namely Account Nos. 1, 2, 7, 8, 9 and 11, restraining the Petitioner from operating the Village Panchayat accounts without further order.

17. This Second Respondent submits that on 20.10.2022, the Petitioner husband namely Vengatesan quarrelled with the Assistant Engineer (Rural Development) and the contractor who is conducting the work under AGAMT work and restrained the officials from inspecting the work and on 21.10.2022 special grama sabha meeting was planned for the Petitioner Palayanoor Village Panchayat with respect to the Social Audit under



W.P. No. 30243 of 2022

Mahatma Gandhi National Rural Employment Guarantee Scheme, but the Petitioner husband interfere into the meeting and quarrelled with the officers hence on 21.10.2022 the said Special Grama Sabha was cancelled and further under letter of the Deputy Zonal Block Development Officer (Zone-3), Tiruvannamalai dated 21.10.2022 and letter of the Panchayat Secretary, Palayanoor Village Panchayat dated 21.10.2022, this Second Respondent lodged a complaint against the Petitioner husband Vengatesan on 21.10.2022 vide Na. Ka. No. 182/2022/ஊஆ3 dated 21.10.2022 before the Inspector of Police, Tachampat Police.

18. This Second Respondent submits that as per G.O. Ms. No. 167, Rural Development (C-4) dated 09.09.1999, Rule 17, the President shall have the custody of the proceedings and records of the meeting of the Village Panchayat. The Petitioner miserably failed to follow the procedures laid down in various Government Orders with respect to the Panchayat Administration and further the Petitioner is not co-operating with the officials and refused to submit the records for auditing of the records, but acted in an



W.P. No. 30243 of 2022

individual manner.

WEB COPY

4. Further, strong reliance is placed on the on the decision of the Division Bench of this Court in ***Village Panchayat Presidents Association -vs- Secretary to Government of India*** (Order dated 06.11.2023 in W.P. No. 31732 of 2023), where it has been observed as follows:-

6. Article 243G of the Constitution of India empowers the Government to enact law, so as to bestow the powers to the Panchayat and also to enable them to function as a self-government. It is after a law is enacted by the Legislature, giving powers to the Panchayat, the Panchayat has to function within the framework of the State Legislation. Article 243G of the Constitution of India has cast an obligation upon the Legislature to enact a law.

7. Pursuant to Article 243G of the Constitution of India, the Tamil Nadu Panchayats Act, 1994 [for brevity, “the Act of 1994”] has been enacted by the State Legislature. It is within the framework of the Act of 1994, the authorities have to proceed



WEB COPY

further. As per Section 2(11) of the Act of 1994, an Executive Authority means a person notified as such by the Government under Section 83 of the said Act. Under Section 83 of the Act of 1994, the Government may, by notification, appoint any person, who shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority of a Village Panchayat.

8. We have been told that under Section 83 of the Act of 1994, the Block Development Officer has been appointed as the Executive Officer of the Panchayat.

9. All the contracts certainly will have to be entered into by the Executive Officer and in view of that, we do not find any error in the order impugned in the present matter. Moreover, an elected representative should be more interested in overseeing the work done for the benefit of the villagers, instead of just keeping themselves limited to the issuance of tenders. The works are already earmarked, administrative sanction has to be granted by the District Collector and/or the authority concerned and



W.P. No. 30243 of 2022

pursuant to the administrative and technical sanction, tenders will have to be issued. Mere issuance of tenders by a particular person cannot be said to affect any right, much less, the vested right. Moreover, it has not been shown from the Act of 1994 that the President is authorized to issue tenders. That apart, it is already stated that tenders are finalized.

In view of the said legal position *viz-a-viz* the explanation offered by the Second Respondent, which deserves acceptance, it is not possible to countenance any of the objections raised by the Petitioner regarding the powers of the Village Panchayat exercised by the Second Respondent to award contracts and operate its bank accounts in this case. Moreover, it has not been demonstrated by the President of the Village Panchayat as to how any material irregularity, much less illegality, has been committed by the Second Respondent warranting interference by this Court in the exercise of discretionary powers of judicial review of the decision-making process under Article 226 of the Constitution.

In the result, the Writ Petition, which does not deserve to be entertained, is disposed. Consequently, the connected Miscellaneous Petition is closed. No costs.



W.P. No. 30243 of 2022

WEB COPY

22.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

kv

To

1. The District Collector/Inspector of Panchayat,
Tiruvannamalai District,
Tiruvannamalai – 606604.
2. Block Development Officer, (VP),
Block Development Office,
Vengikkal,
Tiruvannamalai District – 606604.



WEB COPY



W.P. No. 30243 of 2022

P.D. AUDIKESAVALU, J.

kv

W.P. No. 30243 of 2022

22.11.2023