



W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

and

**W.M.P(MD)Nos.5636 & 5637 of 2020, 1215, 1378 & 1379, 5748,
5786, 5788, 7825, 10279, 10280 & 10283 of 2021**

W.P(MD)No.1611 of 2021

Kaliakkavilai Thinasari Santhai Viyabarigal Nala Sangam,

Rep. by its Secretary,

New No.1-112, St. Anthonyar Complex,

Kaliakkavilai Post,

Kanyakumari District.

... Petitioner

Vs.

1.The Government of Tamil Nadu,

Rep. By its Secretary to Government,

Municipal Administration & Water Supply Department,

St. George Fort,

Chennai – 600 009.



W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

2.The Director of Town Panchayats,
Urban Administrative Building,
75, Santhome High Road,
MRC Nagar,
Raja Annamalaipuram,
Chennai – 600 028.

3.The District Collector,
Kanyakumari District,
at Nagercoil.

4.The Assistant Director of Town Panchayats,
Nagercoil,
Kanyakumari District.

5.Kaliakkavilai Town Panchayat,
Represented by its Executive Officer,
Kaliakkavilai,
Kanyakumari District.

6.The Special Officer,
Kaliakkavilai Town Panchayat,
Kaliakkavilai,
Kanyakumari District.

...Respondents



W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the 1st Respondent to take action upon the representation dated 30.12.2020 given by the petitioner against the Resolution Nos.296 and 297 both dated 24.01.2019 as well as Resolution Nos.316 & 317 both dated 25.02.2019 of the 5th Respondent Town Panchayat by exercising the powers available under Section 36 of Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Mr. N. Mohideen Basha

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader

W.P(MD)No.13251 of 2021

C. Kuttappan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Municipal Administration & Water Supply Department,
St. George Fort, Chennai – 600 009.



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Kanyakumari District,
at Nagercoil.

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Nagercoil,
Kanyakumari District.

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Represented by its Executive Officer,
Kaliakkavilai,
Kanyakumari District.

6. The Special Officer,
Kaliakkavilai Town Panchayat,
Kaliakkavilai,
Kanyakumari District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the resolution numbers 296 & 297 dated 24.01.2019 and resolution 316 & 317 dated 25.02.2019 passed by the 4th, 5th and 6th respondent in fixing the fees for the above Kaliyakkavilai morning market and padanthaloomoodu eveing market in Kanyakumari District for the years 2020 to 2023 and quash the same as illegal and direct the respondent to pass anew resolution to refix the fees and categories as per law.

For Petitioner : Mr. Mahaboob Athiff

for Mr.M.Krishna Sreethar

For Respondents : Mr. A.K. Manikkam - for R1 to R4

Special Government Pleader

Mr.S. Shanmugavel - for R5 & R6

Standing Counsel



W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

WEB CO **W.P(MD)No.6386 of 2020**

Kaliakkavilai Thinasari Santhai Viyabarigal Nala Sangam,

Rep. by its Secretary,

New No.1-112, St. Anthoniyar Complex,

Kaliakkavilai Post,

Kanyakumari District.

... Petitioner

Vs.

1. The District Collector,

Kanyakumari District,

at Nagercoil.

2. The Assistant Director of Town Panchayats,

Nagercoil,

Kanyakumari District.

3. The Executive Officer,

Kaliakkavilai Town Panchayat,

Kaliakkavilai,

Kanyakumari District.



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4. The Inspector of Police,

Kaliakkavilai Police Station,

Kaliakkavilai,

Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the Respondents 1 to 3 to prevent the 4th respondent from collecting user fees, toll fees and any charges of similar or other kind in the Kaliyakkavilai Bus Stand where shops are temporarily allowed from any person and to ensure collection of user fee, and toll fees and any charges of similar or other kind in the Kaliyakkavilai vegetable and fish market by the licensee only after the execution of a valid contract and in strict compliance of the terms and conditions imposed in the tender notification of the 3rd respondent dated 04.03.2020 and to take action for the violations so far committed by the 4th respondent, in the light of the representations given by the petitioner dated 01.04.2020, 02.04.2020, 03.04.2020, 04.04.2020, 09.04.2020, 21.04.2020, 11.05.2020 and lastly on 16.05.2020.



W.P(MD)Nos.1611, 13251 of 2021 & 6386 of 2020

For Petitioner : Mr. N. Mohideen Basha

For Respondents : Mr. A.K. Manikkam for R1 to R3

Special Government Pleader

Mr. R. Sivakumar - for R5

Government Advocate (Crl. side)

COMMON ORDER

The issue that is involved in all these Writ Petitions is common and hence they are taken up together, heard and disposed of through this Common Order.

2. When the matter came up for hearing on 30.11.2023, this Court passed the following order:

"The subject matter of challenge in W.P(MD)No.13251 of 2021 pertains to four resolutions that were passed by the respondents 4 to 6. In resolution Nos.296 and 297, dated 24.01.2019 and resolution Nos.316 and 317, dated 25.02.2019, whereby, the fees was fixed for the Kaliyakkavillai Morning Market and



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Padanthaloomoody Evening Market in Kanyakumari District.

2.The main ground that was urged by the learned counsel for the petitioner is that the Special Officer, who was in charge of the concerned Panchayat before the Council was elected, exercised a legislative/statutory power that is vested with the Council and therefore, it is contended that the resolutions that were passed by the respondents 4 to 6 are illegal. It was further contended that the fees was raised exorbitantly to 300% / 500%. The ground of malafides has also been raised as against the Executive Officer of the Panchayat.

3.W.P(MD)Nos.6386 of 2020 and 1611 of 2021 have been filed for issuing direction to the Government and also to the District Collector to take action against the Executive Officer of Kaliyakkavillai Town Panchayat, on the ground that the fees has been fixed by him exorbitantly in the Vegetable and Fish market and that apart, an exorbitant fees was collected than what was fixed in violation of terms of auction.

4.When the matters were came up for



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hearing on 23.11.2021, this Court directed the learned Special Government Pleader to take instructions as to what action was taken against the concerned person for collecting exorbitant fees.

5. When the matters were taken up for hearing today, the learned Special Government Pleader sought for some time to take instructions in this case and to make his submissions.

6. Post all these writ petitions under the caption 'Part Heard Cases' on 07.12.2023 at 02.15pm."

3. When the matter was taken up for hearing today, the learned Special Government Pleader, on instructions, submitted that with regard to the complaint that was made against the Special Officer, an enquiry was conducted by the District Collector, Kanyakumari District and through proceedings, dated 27.01.2023, it was found that the erstwhile Executive Officer one Yesubalan was behind the entire illegality and hence, directions were given to initiate departmental proceedings under Rule 17(a) of Tamil Nadu Civil



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Services (Discipline and Appeal) Rules. The learned Special Government Pleader submitted that there was no ground to proceed against the Special Officer and hence, no further proceedings were initiated.

4. The learned Special Government Pleader further submitted that in so far as the licensee is concerned, the license was cancelled through proceedings, dated 09.04.2022, both on the ground that several complaints were made against the licensee and also on the ground fact that the licensee failed to deposit the requisite amount to continue with the license.

5. The issues that are involved in these Writ Petitions can be broadly categorized as follows:

a) The power exercised by the Special Officer in fixing the license fee in the absence of the elected council and legality of the same.

b) The action to be initiated against the Special



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Officer / Executive Officer/Licensee on the basis of the allegations made against them for fixation of exorbitant fees and collection of fees more than what was fixed by the Special Officer.

6. In so far as the first issue is concerned, it is an admitted case that the issue pertains to a Town Panchayat namely, Kaliyakkavillai Town Panchayat. There is no dispute with regard to the fact that during the relevant period, there was no elected council and it was managed by the Special Officer appointed by the District Collector.

7. Certain provisions of the Tamil Nadu District Municipalities Act, 1920 (for brevity herein after referred to as “the Act”) will have to be considered to decide as to whether the Special Officer is conferred with any authority or jurisdiction to fix the market fees in the absence of an elected council.



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8. The transitory provision for appointment of Special Officer is found in Section 375 of the Act and for proper appreciation, Section 375(1) of the Act is extracted hereunder:

"375. Transitory provision.- (1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, the State Government may, by notification, if necessary, appoint special officers to exercise the powers and discharge the functions of the Municipalities or the I[Third Grade Municipalities, Town Panchayat], as the case may be, until the day on which the first meetings of the Municipal Councils are held after ordinary elections to the Municipalities and the I[Third Grade Municipalities, Town Panchayats] after the date of commencement of the Tamil Nadu District Municipalities (Amendment) Act 1994 (Tamil Nadu Act 25 of 1994)."

9. It is clear from the above that the Special Officer can exercise the power and discharge the functions of the Municipalities as provided under Section 374 of the Act or of the Third Grade



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Municipalities as described under Chapter I-A of the Act. This provision does not even deal with the Town Panchayat and it is not known as to how the transitory power was vested with the Special Officer to deal with the Town Panchayat in the absence of an elected council.

10. It is also relevant to take note of Section 368 of the Act which provides for a Special provision in case of a newly constituted and reconstituted Municipality Council. For our purposes, it will be relevant to extract Section 368 (3) of the Act:

*"368. Special provision in the case of newly constituted and reconstituted Municipal Council .—
(3) The Special Officer shall exercise the powers, discharge the duties and perform the functions of the Municipal Council until the Council has been constituted. 5 [of the Chairman until a Chairman has been elected] 6 [by the Council] 7 [***] and of the Executive Authority until a Chairman has been elected 6 [by the Council] or a commissioner has been appointed, as the case may be.]"*



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11. It is clear from the above that by virtue of this provision, the Special Officer can exercise the powers, discharge the duties and perform the functions of the Municipal Council until the Council is constituted. No such specific power is available in the entire Act with respect to the elected Council in a Town Panchayat and the above provision cannot be applied in the case of a Town Panchayat.

12. It is also quite clear from Section 375 of the Act that the legislature has consciously vested such transitory power on the Special Officer only with regard to the Municipalities or the Third Grade Municipalities. This becomes more significant since Town Panchayat is dealt with separately and Section 3(R) makes it clear that the Town Panchayat shall be a body corporate which means that it is a separate legal entity by itself having a perpetual succession and a common seal.



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13. In the instant case, the Special Officer has proceeded to perform the power that has been specifically vested with the elected Council under Section 260 of the Act to fix the fees. This power that has been exercised by the Special Officer is not traceable to any provision under the Act. Even otherwise, the role of a Special Officer who emanates from an executive organ is only to take care of the day-to-day affairs and he cannot get into areas which are specifically vested with the elected Council. In other words, the Special Officer cannot exercise such powers that are vested exclusively on elected Council under the Act, in the absence of a specific provision conferring such a power on the Special Officer with respect to the Town Panchayat.

14. In the light of the above discussion, this Court holds that the power exercised by the Special Officer by fixing the fees and based on which the licensee had collected the entry fees in the daily market, is held to be illegal and beyond the jurisdiction of the Special officer. As a consequence, the entry fee that was fixed by the Special



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Officer can no longer be collected in the daily market and the elected Council must take immediate steps to fix the entry fee and only such entry fee fixed can be collected in the daily market. The first issue is answered accordingly.

15. In so far as the action to be initiated against the Special Officer / Executive Officer / Licensee, it is brought to the notice of this Court by the learned Special Government Pleader that the District Collector had already conducted an enquiry and has exonerated the Special Officer. However, action was directed to be initiated against the Executive Officer by initiating departmental proceedings under Rule 17(a) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. In view of the same, there shall be a direction to the District Collector, Kanyakumari District, to proceed further with the departmental action against the Executive Officer and the same shall be completed within a period of three months from the date of receipt of a copy of this order.



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16. In so far as the action to be initiated as against the licensee, the license granted in favour of the licensee was already terminated through proceedings, dated 09.04.2022. Hence, the scope of enquiry, at the best can confine itself to see as to whether the fourth respondent / licensee had collected exorbitant fees than what was fixed by the Special Officer. Yet another area of enquiry would be to see whether the fourth respondent / licensee had collected the entry fee during the period April and May, 2020. The learned counsel for the petitioners submitted that the fourth respondent / licensee had collected the entry fee even during this period and thereafter, had sought for the adjustment /waiver under G.O(Ms.)No.298, dated 02.09.2020. This statement was vehemently opposed by the learned counsel appearing on behalf of the fourth respondent / licensee and he submitted that the licensee did not collect any exorbitant entry fee than what was fixed by the Special Officer and that no entry fee was collected, during April and May, 2020 and hence, the fourth respondent / licensee is entitled to seek for the waiver under the relevant Government Order.



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17. It is not necessary for this Court to get into this issue since it is factual. Hence, there shall be a direction to the District Collector, Kanyakumari District, to conduct an enquiry by affording an opportunity to all the interested parties and take a decision within a period of three months from the date of receipt of a copy of this order. The second issue is answered accordingly.

18. All these Writ Petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

07.12.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

RM



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To

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N.ANAND VENKATESH, J.

RM

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