



W.P(MD)No.4153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4153 of 2023

and

W.M.P.(MD)No.3969 of 2023

V.M.Panchavaranam

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Arupukottai,
Virudhunagar District.

2.The Commissioner,
Narikudi Panchayat Union,
Narirkudi,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the respondents culminating in impugned order No. Na.Ka.A5/590/2023 dated 13.02.2023 under Section 212 of the Tamil Nadu Panchayats Act, 1994 issued by the 1st Respondent, quash the same as illegal.



W.P(MD)No.4153 of 2023

WEB COPY

For Petitioner : Mr.T.Mohan, Senior Counsel,
For Mr.R.M.Arun Swaminathan.

For Respondents : Mr.Veera Kathiravan,
Addl. Advocate General,
Asst. by Mr.A.K.Manikkam,
Spl. Government Pleader for R1.
Mr.D.Sadiq Raja,
Spl. Government Pleader for R2.

ORDER

Heard the learned senior counsel for the writ petitioner, the learned Additional Advocate General assisted by the learned Special Government Pleader for the first respondent and the learned Special Government Pleader for the second respondent.

2.The writ petitioner is the chairperson of Narikudi Panchayat Union. She challenges the impugned communication dated 13.02.2023 issued by the Revenue Divisional Officer, Aruppukottai proposing to convene the meeting of the council on 03.03.2023 at 11.00 am to vote on the no confidence motion moved against the writ petitioner under Section 212 of the Tamil Nadu Panchayats Act, 1994.



W.P(MD)No.4153 of 2023

3.The learned senior counsel for the writ petitioner took me through the contents of the affidavit filed in support of the writ petition. The contentions of the learned senior counsel for the petitioner are two fold. The first contention is that three members of the council have been consecutively absent in attending the council meeting and that therefore, they have suffered disqualification under Section 38(3)(i) of the Act. When the petitioner proposed to convene a meeting to disqualify the said absentee members, she was prevented from doing so by the Commissioner/Block Development Officer, Narikudi Panchayat Union. She, therefore, filed W.P.(MD)No.21043 of 2022. This Court vide order dated 02.09.2022 in W.M.P.(MD)No.15277 of 2022 granted interim injunction restraining the third respondent from interfering with the petitioner's right to convene the meeting of the local body. Even thereafter, the Commissioner, Narikudi Panchayat Union wrote a letter dated 22.09.2022 to the District Collector, Virudhunagar seeking his advice as to whether the meeting can be convened as proposed by the petitioner. Having thus effectively frustrated the petitioner from convening the meeting, now one of the charges laid down against the petitioner is that she did not convene the council meeting regularly. The learned senior counsel pointed out that as per Section 212(2) of the Act, written notice of intention to make no confidence motion must be signed by members not less in number than 3/5th of sanctioned strength. To



W.P(MD)No.4153 of 2023

carry the motion, support of not less than 4/5th of sanctioned strength is required. The learned senior counsel pointed out that if the three absentee members had been disqualified, that would have made considerable difference to the entire situation. He, therefore, called upon this Court to interfere with the matter.

4.Per contra, the learned Additional Advocate General for the respondents submitted that no case for interference has been made out.

5.Before considering the rival contentions, I must observe that the communication dated 22.09.2022 addressed by the Commissioner, Narikudi Panchayat Union to the District Collector, Virudhunagar is *prima facie* contumacious. I had specifically restrained the Commissioner from interfering with the petitioner's right to convene the meeting of the local body. The petitioner proposed to hold the meeting on 05.10.2022. The Commissioner could not have attempted to put spokes in the wheel by seeking the advice of the Inspector of Panchayat in the matter. The Registry is therefore directed to register a case of *suo motu* contempt against Thiru.A.Prince, Commissioner, Narikudi Panchyat Union and issue statutory summon to him and list the matter before this Court.



W.P(MD)No.4153 of 2023

WEB COPY

6.Coming to the merits of the matter, it appears that numbers are not on the side of the writ petitioner as on date. Section 212 of the Tamil Nadu Panchayats Act, 1994 reads as follows:-

“212.(1) Subject to the provisions of this section, a motion expressing want of confidence in the vice-chairman of a panchayat union council 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 panchayat union council not less in number than one-half of the sanctioned strength of the panchayat union council, together with a copy of the motion which is proposed to be made and a written statement of the charges against the vice-chairman shall be delivered in person to the Revenue Divisional Officer of the division by any two of the members of the panchayat union council signing the notice.

(3) A copy of the statement of charges along with the motion shall be caused to be delivered to the concerned vice-chairman by the Revenue Divisional Officer and the vicechairman shall be required to give a statement in reply to the charges within a week of the receipt of the motion by the vice-chairman.

(4) The Revenue Divisional Officer shall then convene a meeting for the consideration of the motion at the office of the panchayat union council at a time appointed by him.



WEB COPY

(5) The Revenue Divisional Officer shall give to the members notice of not less than fifteen clear days of the meeting and of the time appointed therefor.

(6) The Revenue Divisional Officer 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 Revenue Divisional Officer 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 Revenue Divisional Officer under sub-section(7).

(7) If the Revenue Divisional Officer 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 sub-section (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 otherwise 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 Revenue Divisional Officer shall read to the panchayat union council the motion for the consideration of which it has been convened, the statement of charges and the statement, if any, of the vice-chairman in reply to the said charges.



W.P(MD)No.4153 of 2023

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

(11) The Revenue Divisional Officer 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 Revenue Divisional Officer to the Government.

(13) If the motion is carried with the support of not less than two-thirds of the sanctioned strength of the panchayat union council, the Government shall, by notification, remove the vice-chairman of the panchayat union council.

(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-chairman shall be received until after the expiry of six months from the date of the meeting.

(15) No notice of a motion under this section shall be received within six months of the assumption of office by the vice-chairman.”

7.In Sub Sections 3, 4, 5, 6 and 8 of Section 212 of the Act, the expression employed is “shall”. It means that the authority will not have choice or discretion in the matter. If the written notice of intention to make the motion is signed by the requisite number of members, then the authority has to act on



W.P(MD)No.4153 of 2023

the same. The sanctioned strength of the Council is 14. As many as 12 members have signed the requisition. Therefore, the Revenue Divisional Officer, Aruppukottai rightly gave notice for convening the meeting on 03.03.2023. The action of the Revenue Divisional Officer, Aruppukottai cannot be faulted.

8.I am obliged to deal with the contention of the learned senior counsel for the petitioner that the petitioner must now be allowed to convene the meeting for disqualifying the three members who had consecutively absented themselves. This contention lacks merit. The petitioner could have approached this Court immediately after she was not allowed to convene the meeting in the first week of October, 2022. That apart, disqualification under Section 38(3)(i) of the Act will not bar the disqualified members from being restored to office. Section 39(2) of the Act provides for re-entry. Of course, that can happen only in the next meeting. In view of the massive strength on the other side, that would have been only a matter of formality.

9.Even though a member who had absented himself from taking part in the meeting of panchayat for a period of three consecutive months would cease to hold the office, there must be a formal resolution or proceeding or order or



W.P(MD)No.4153 of 2023

atleast communication issued to that effect. In the present case, no such formal order has been passed against the three members in question disqualifying them. Therefore, I am not in a position to interfere with the impugned communication. The writ petition stands dismissed.

10.Considering the special facts and circumstances of this Court, the entire proceedings shall be videographed. The question as to whether the motion moved against the petitioner fulfills the requisite strength as prescribed under Section 212 of the Act in the light of Section 38 of the Act is left open. The question whether the disqualification meeting should have preceded the no-confidence motion meeting is also left open. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2023

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

Issue order copy on 02.03.2023.



W.P(MD)No.4153 of 2023

To:

1.The Revenue Divisional Officer,
Arupukottai,
Virudhunagar District.

2.The Commissioner,
Narikudi Panchayat Union,
Narirkudi,
Virudhunagar District.



WEB COPY



W.P(MD)No.4153 of 2023

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.4153 of 2023

28.02.2023