



W.P(MD)No.4363 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4363 of 2023

and

W.M.P.(MD)No.4096 of 2023

Latha

... Petitioner

Vs.

1.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Kulithalai, Karur District.

2.The Block Development Officer,
Thogamalai,
Kulithalai Taluk,
Karur 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 relating to the impugned order passed by the 1st respondent vide his impugned proceedings in Na.Ka.A3-633-2023 dated 18.02.2023 and quash the same as illegal.



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For Petitioner : Mr.M.Ajmalkhan, Senior Counsel,
For Mr.J.Senthil Kumaraiah

For Respondents : Mr.M.Lingadurai,
Spl. Government Pleader for R1.
Mr.T.Vilavankothi,
Addl. Government Pleader for R2.

ORDER

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

2.The writ petitioner is the chairperson of Thogamalai Panchayat Union, Kulithalai Taluk in Karur District. She was elected as chairperson in the year 2020 with the support of 11 members. The sanctioned strength is 15. It appears that there has been a political realignment and 11 members have given written notice of intention to make no confidence motion under Section 212 of the Tamil Nadu Panchayats Act, 1994. Based on the said written notice dated 03.02.2023, the Revenue Divisional Officer, Kulithalai issued notice dated 09.02.2023 calling for reply from the petitioner. The petitioner offered her reply on 15.02.2023. The Revenue Divisional Officer has now issued notice



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dated 18.02.2023 proposing to convene the panchyat union meeting on 08.03.2023. This notice is put to challenge in this writ petition.

3.The learned senior counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned notice. His primary contention is that under section 212 (3) of Tamil Nadu Panchayats Act, 1994, the Revenue Divisional Officer shall deliver a copy of the statement of charges along with motion on the chairman / vice-chairman concerned and that the chairman and vice-chairman should offer their reply within a week thereafter. The learned senior counsel's pointed contention is that there is no provision for consideration of the reply by the Revenue Divisional Officer. The Revenue Divisional Officer has to straightaway convene a meeting for consideration of the motion. The learned senior counsel contrasted the statutory scheme underlying Section 205 of the Act as interpreted by this Court with the statutory scheme set out in Section 212 of the Act. He pointed out that while written notice of intention to move no confidence motion can be signed by members not less than the number of 4/5th of the sanctioned strength, the motion has to be carried with the support of not less than 4/5th of the sanctioned strength of the panchayat union council. He submitted that there are grey areas in



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Section 212 of the Act, which this Court will have to supplement. The learned senior counsel submitted that if Section 212 of the Act is not appropriately interpreted, then democratic processes can be subverted and all kinds of undesirable forces will be at play. He called upon this Court to grant relief as prayed for.

4. Though the submissions advanced by the learned senior counsel appeal to my moral sense, I have to necessarily apply the law as it obtains. Unlike Section 205 of the Act, under Section 212 of the Act, there is no scope for exercising discretion by the authority concerned. Under Section 205 of the Act, even if the no confidence motion is carried out, the Inspector of Panchayat can still decline to pass an order removing the president from office. However, under Section 212 of the Act, if the motion is carried out with support of not less than $\frac{4}{5}$ th of the sanctioned strength of panchayat union council, the Government is obliged to notify removal of the person concerned. Section 212 of the Act is purely a game of numbers. The reply given by the petitioner to the Revenue Divisional Officer will be placed before the council at the time of voting. However, there will not be any debate on the motion. In this case, the first respondent has merely acted as per statutory mandate set out in Sub Sections 4 and 5 of Section 212 of the Act. The true function of Constitutional



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Courts is to apply the statute as it is so long as it has not been struck or read down. We may not observe the principle of separation of powers in the strict montesquieuan sense. That lines are sometimes blurred is no excuse to step across. I do not find any ground to interfere and the writ petition stands dismissed. Considering the facts and circumstances pleaded by the learned senior counsel, the voting that is to take place on 08.03.2023 or any other subsequent date shall be fully videographed. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Kulithalai, Karur District.
- 2.The Block Development Officer,
Thogamalai,
Kulithalai Taluk,
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G.R.SWAMINATHAN, J.

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