BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P.(MD).No.10851 of 2014 and
MP(MD) No.1 of 2014 and WMP(MD) No.18071 of 2016

C.Raja
Kesampatti Village Panchayat,
Kottampatti Union,
Melur Taluk,Madurai District. ... Petitioner

Vs

The Assistant Director of Rural development,
(Audit),
Collectorate,
Madurai – 625 020. ... 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 respondent in his proceedings in Na.Ka.No.461/2013/A6, dated 05.06.2014 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.S.Saji Bino
Special Government Pleader

**ORDER**

This writ petition was filed in the year 2014 as against the second show cause notice issued by the respondent in Na.Ka.No. 461/2013/A6, dated 05.06.2014, pursuant to an audit conducted on the affairs of the Kesampatti Village Panchayat.

2.The petitioner is an erstwhile Panchayat President of Kesampatti Village for a period from 2006 to 2011. The expenditure of the Village Panchayat for the year 2006 to 2011 were subjected for audit in the year 2013 and the respondent found that the petitioner has caused a loss of Rs.10,80,919/- to the Panchayat and therefore a show cause notice has been issued to the petitioner as per Section 193 of the Tamil Nadu Panchayats Act, 1994 and the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 (hereinafter called as Surcharge Rules), calling upon the petitioner to offer his explanation, if any, within a period of fifteen days. The petitioner has offered his explanation, which was placed before the Village Committee (Grama Saba) and on the request of the Grama Saba, the expenditure which has been spent by the petitioner in excess to the tune of Rs.10,89,919/- was reduced to Rs. 79,050/-. Thereafter, a further notice was issued to the petitioner, calling upon him to pay the reduced amount to avoid further proceedings as per the Rules. The second show cause notice calling upon the petitioner to pay a sum of Rs.79,050/- is under challenge in this writ petition.

3.The learned counsel appearing for the petitioner submits that the impugned order has been passed without following the provisions under the Tamil Nadu Panchayats Act,1994. According to the learned counsel, if any loss has been detected in Panchayat fund shall only be recovered as contemplated under Section 234 of Tamil Nadu Panchayats Act, 1994, by filing a civil Suit. Therefore, the surcharge proceedings initiated by the respondent is not in accordance with law. None of the provisions of the Panchayat Act provides for recovery of amount by initiating surcharge proceedings and therefore the impugned order is liable to be set aside. He further submits that the impugned order is a non-speaking order, does not contain specific reasons for rejecting the representation of the petitioner. The petitioner was served as the President for the period from 2006 to 2011. The audit was conducted in the year 2010 and notice was issued in the year 2013. Therefore, the impugned order is bad in law. The learned counsel appearing for the petitioner by relying on the Tamil Nadu Panchayats (Issue and Disposal of Audit Report of Village Panchayats) Rules, 2000 submits that the Deputy Block Development Officer of the Panchayat Union is the auditor appointed by the Government under Section 193(1) of the Tamil Nadu Panchayats Act, 1994. Therefore, the audit, if any, ought to have been conducted only by the competent authority, namely, the Deputy Block Development Officer of the Panchayat Union. However, in this case, the audit was conducted by the Assistant Director of Audit, who is an incompetent authority and on this ground also, the impugned notice is liable to be set aside.

4.The learned Special Government Pleader appearing for the respondent submits that one Azhagan of Kesampatti Village has filed a writ petition in WP(MD)No.931 of 2011 as against this petitioner that this petitioner as a Panchayat President from 2006-2007 and 2008 -2009 has caused loss of revenue to the tune of Rs.12 Lakhs to the Government and he has also submitted a representation to the concerned authorities on 09.10.2011 and requested the authorities to act upon it. This Court by order dated 07.02.2013 has disposed of the writ petition with a direction to the respondent to act in accordance with law. The said Azhagan has also filed a Public Interest Litigation in WP(MD)No. 7702/2014 for initiation of surcharge proceedings as against this petitioner. In view of the orders of this Court and the directions of the Assistant Director of Panchayat , the respondent, who is the competent Officer under the Surcharge Rules has issued a surcharge notice under Section 193 of the Tamil Nadu Panchayats Act, 1994 in Roc.No. 461/2013 A6, dated 27.12.2013, directing the petitioner to show cause as to why further action should not be pursued for his action in spending over and above the admissible limit relating to maintenance of road, street light, bore well, maintenance of over-head tank, purchase of electrical fitting and implements, purchase of extra fittings for hand-pump, excess expenditure towards maintenance of pipe line, etc.,worth Rs.10,89,919/- for the period from 2007-2008 to 2011-2012, while he served as the President of Kesampatti Village Panchayat, Kottampatti Block, within 15 days from the date of receipt of the notice.

4.1.The learned Special Government Pleader further submits that the explanation offered by the petitioner was placed before the Village Committee for its remarks and inasmuch as the Village Committee (Grama Sabha) felt that the President undertook the above essential works only for the welfare of the villagers. On the recommendation of the Grama Sabha, based on the audit objections, the the remarks offered by the petitioner herein and also on scrutinizing the other connected records, it was found that the petitioner herein on his own accord and even without obtaining any permission from the Block Development Officer has spent Rs.79,050/-. Therefore, the notice impugned in this writ petition for the purpose of issuing 'surcharge certificate' for proceeding further as against the petitioner was issued with a direction to the petitioner herein to either remit the amount or to submit his explanation. The petitioner herein instead of answering to the notice, came up with this writ petition.

4.2.The learned Special Government Pleader further submits that the Government Order, G.O.Ms.No.300 (1) D, Rural Development Department, dated 21.06.2010 has provided one time expenditure upto Rs.10,000/- and that amount has also been deducted from the expenditure of this petitioner. By referring Rule 3 of Tamil Nadu Surcharge Rules, the learned Special Government Pleader submits that the respondent is the competent authority, in exercising powers related to issuance of surcharge certificate and the notice impugned in this case is issued by the competent authority alone. He further submits that the respondent has considered the petitioner's reply carefully and personally examined each and every item and disallowed the items contrary to law and out of the total misappropriation amount pointed out in the audit Rs.10,80,919/- has also been reduced to Rs.79,050/- by the respondent, based on the detailed examination and also considering the objections of the Grama Sabha. He further submits that this writ petition is of pre-mature, even before the surcharge certificate has been issued.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The show cause notice calling upon the petitioner to pay a sum of Rs.79,050/- which has been spent in excess by the petitioner as a Village Panchayat President during his tenure 2006-2011 is under challenge in this writ petition. The grievance of the petitioner is that the respondent is not the competent authority to issue this notice and as per Section 193 of the Tamil Nadu Panchayats Act, 1994 r/w Tamil Nadu

Panchayats (Issue and Disposal of Audit Report of Village Panchayats) Rules, 2000, the Deputy Block Development Officer of the Panchayat Union is the competent authority to conduct the audit. However, in this case, the incompetent authority has conducted the audit and also issued the impugned notice. The impugned notice has been issued as per the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000. These Rules have been framed in the year 2000, under the powers conferred under Clause XVII 242(2) of the Tamil Nadu Panchayats Act, 1994, which empowers the Government to frame certain Rules prescribing the powers of auditors to disallow and surcharge and recovery of sums disallow on surcharged. The Assistant Director of Rural Development (Audit) is prescribed as an officer to exercise the powers under the Surcharge Rules, in respect of funds of Village Panchayat or Panchayat Union or District Panchayat, within his jurisdiction. The Officer, who has empowered under the Rules has to carefully and personally examine every case of loss or waste or misapplication of money or property of the Village Panchayat or

Panchayat Union or District Panchayat and may disallow every item contrary to law and surcharge the same on the person making or authorizing the making of illegal payments and may charge against any person responsible therefor, the amount of any deficiency loss of the profitable outlay.

7.The Auditor, empowered under the above Rule is also empowered to issue Surcharge Certificate and before issuing a Surcharge Certificate, he is also expected to give a show cause notice to the person concerned, calling upon him to state his defence about the proposed notice in writing by providing 15 days time. In this case, the respondent, who is the competent authority, as per Rule 3 has issued a show cause notice to the petitioner on 27.12.2013 in Na.Ka.No. 461/2013/A6, dated 05.06.2014 and the petitioner was provided with 15 days time, based on the audit objection. The petitioner has also offered his explanation through the Block Development officer, Kondampatti, which was forwarded to the respondent in Na.Ka.

5085/2014, dated 26.03.2014. The petitioner, in fact was provided three months time to offer his explanation. The reports along with his explanation were also placed before the Village Committee (Grama Sabha) and the objections of the Grama Sabha with regard to certain works were also considered by the respondent and thereafter this impugned notice was issued restricting the amount as Rs.79,050/-, calling upon the petitioner either to pay the amount or he will be subjected for further proceedings under the Surcharge Rules. Though the respondents have pointed out certain defects of various heads of expenditure like, maintenance of Road, street lights, borewell and purchase of electrical fittings etc., they have restricted the impugned notice with three items alone that he has spent Rs.30,000/- without any bills for conducting Rural Sports Meet, for providing drainage channel and the expenditure incurred for taking photgraphs under the Kalignar Housing Scheme. The petitioner has offered his explanation with the Government Order in G.O(1D) No.300, Rural Development and Panchayat Department, dated 21.06.2010, permitted the Village

Panchayat to spend upto Rs.20,000/- for conducting Rural Sports Meet during Anna birthday celebrations on 15th September and during pongal holidays and during rural library competition. The petitioner has spent only Rs.30,000/-, for which, the respondent has provided Rs.10,000/- and fixed the liability for the remaining amount Rs.20,000/- on the petitioner, without considering the above Government Order. According to the petitioner, though there is no clarity with regard to the second item of expenditure, he has produced the documents to substantiate the expenditure. Without considering the same, the expenses has been added in the notice. Insofar as the third item of expenditure is concerned, the respondent without discussing the explanation offered by the petitioner has simply fixed the liability on the petitioner.

8.Perusal of the documents discloses that the petitioner has not produced any receipts for the expenditure of Rs.30,000/-, which he has spent for the Rural Sports Meet. The Government Order in G.O(1D) No.300, Rural Development and Panchayat Department, dated

21.06.2010 empowered the Village Panchayat to spend upto Rs.20,000/-, but Rs.10,000/- at one meet. This order also exempted by the Block Development Officer from a sum of Rs.30,000 as fixed in the audit. Demand was made only for Rs.20,000/-. With regard to the second count also, the reasons has been assigned in the impugned order, which this Court is not inclined to discuss in detail. The order impugned in this writ petition is only a show cause notice calling upon the petitioner either to pay the amount of Rs.79,050/- or they will proceed further with the surcharge certificate.

9.Rule 4 of the Surcharge Rules mandate a show cause notice before issuing the Surcharge Certificate, for which, this petitioner has also offered his explanation in the month of March 2014 and he was provided more than three months to offer his explanation. On receipt of his explanation, the respondent has placed the materials before the Grama Sabha and also considering their objections issued further notice before the issuance of the Surcharge Certificate. Even if the surcharge certificate is issued, the petitioner is having an appeal remedy before the Inspector of Panchayat or any other officer authorised by the Government under Rule 5 of the Act. It is to be noted that during the audit, the auditor has found deficiency of the amount to the tune of Rs.10,89,911/-. However, after providing an opportunity to the petitioner based on the objections of the Grama Sabha, the amount towards duplication of expenditure was reduced to Rs.79,050/-and thereafter further show cause notice has been issued. This writ petition has been filed even before the issuance of the Surcharge Certificate challenging the show cause notice itself and is kept pending for the past nine years. Therefore, this Court is inclined to dismiss this writ petition with the following directions:-

i. The petitioner shall offer his explanation to the show cause notice.

ii. In the event, if the respondents are not convinced with the petitioner's reply, they shall proceed with surcharge certificate.

iii. If the petitioner requires personal hearing, he can make a written request to the respondent, within 15 days from the date of receipt of a copy of this order and the respondent shall consider the same and thereafter pass further order within a period of one month from thereon.

iv. The Inspector of Panchayat or the competent Officer shall take further course of action to execute the proceedings on behalf of the Village Panchayat within a period of three months from the date of issuance of Surcharge Certificate.

v. Considering the lapse of time in the litigation, the respondent shall also invoke Section 234 of the Act, for compensation as against this petitioner.

10.With the above directions, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

**28.07.2023**

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

The Assistant Director of Rural development,
(Audit),
Collectorate,
Madurai – 625 020.

**B.PUGALENDHI, J.**

vrn

**Order made in**
**W.P.(MD).No.10851 of 2014 and**
**MP(MD) No.1 of 2014 and WMP(MD) No.18071 of 2016**

**28.07.2023**