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W.P.No.24396 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.24396 of 2024
and W.M.P.Nos.26663 & 26664 of 2024

Durgadevi Venkatesan

...Petitioner

-Vs-

1. The Inspector of Panchayat cum
District Collector,
Thiruvannamalai District.
2. The Assistant Director of Panchayat
Thiruvannamalai District,
Thiruvannamalai.
3. The Block Development Officer
(Village Panchayats)
Tiruvannamalai Block,
Tiruvannamalai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings in Se.Mu.No.1587/2020/A2/UE(U) thi.ko dated 15.07.2024 issued by the first respondent herein published in the gazette dated 07.08.2024 and the order dated 09.08.2024 in Na.Ka.No.1587/2020/A2 of the first respondent and quash the same.



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For Petitioner : Mrs.A.L.Ganthimathi
Senior Counsel
For Mr.L.Palani Muthu.

For Respondents
For R1 & R2 : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mr.V.Manoharan
Additional Government Pleader

For R3 : Mr.S.Balamurugan
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 15.07.2024 and the gazettee publication dated 07.08.2024, thereby removed the petitioner from the post of President of Palayanur Village Panchayat, Tiruvannamalai District.

2. The petitioner was elected as Panchayat President in Palayanur Panchayat, Tiruvannamalai District, in the year 2021. While being so, there were certain allegations made against the petitioner due to which, an enquiry was ordered. During the enquiry, the petitioner was served with charge memo consisting eight charges. The petitioner did not submit any explanation for want of documents. Therefore, the petitioner requested copies of documents relevant to the charges made against her.



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However, it was not considered as such, she approached this Court in W.P.No.22950 of 2023. This Court by an order dated 29.09.2023, allowed the petitioner to inspect the documents which were relied upon by the respondents on 13.10.2023 at about 10.30 a.m., to peruse the documents. Even then, she could not able to submit her explanation, since the documents are more than 1000 pages and it requires to reply the charges against her. However, without serving the copy of those documents, the first respondent ordered for meeting to be convened by the Thasildar. The Thasildar issued notice and convened meeting in which out of nine members, six are not supported the charges and two of them supported the charges and one of them refused to vote. On receipt of the minutes recorded by the Thasildar in the village panchayat meeting, the first respondent removed the petitioner from the post of President.

3. The learned Senior Counsel appearing for the petitioner submitted that the petitioner was not furnished with any of the documents relevant to the charges. Therefore, the petitioner could not able to submit proper explanation. Without any explanation, the



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petitioner removed from the post of President. It is clear violation of principles of natural justice. Though this Court directed the petitioner to inspect the documents which were relied upon to frame charges, it takes voluminous and as such the petitioner requested to furnish copy of those documents. Without even furnishing the copies of those documents, the petitioner was removed from the post of President.

3.1. She further submitted that in the meeting convened by the Thasildar out of nine members, six of them were not supported the charges levelled against the petitioner. Even then, the first respondent without stating any reasons for the report which was in favour of the petitioner, removed the petitioner from the post of President. If the first respondent differs from the minutes recorded by the Thasildar, the first respondent ought to have stated the reasons for his deviation and ought to have issued notice to the petitioner and after giving an opportunity to submit her explanation, then only the order can be passed under Section 205(11) of the Tamil Nadu Panchayat Act. In support of her contention, she relied upon the judgment reported in **(2011) 5 CTC 197** in the case of ***State of Tamil Nadu Vs. S.Ramasamy***, in which the Hon'ble Division



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Bench of this Court held as follows :-

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"17.The scope and ambit of the powers under Section 205 of the Tamil Nadu Panchayat Act was considered by one of us (D.Murugesan, J.) in V.Subramani vs. State of Tamil Nadu, rep. By Secretary to Government, Rural Development [2001 WLR 617]. It was held that the order of the Inspector of Panchayat rejecting the views of the Village Panchayat should be supplemented by reasons.

18.The issue regarding the manner of exercise of power under Section 205 was earlier referred to a Full Bench of this Court. The Full Bench in District Collector, Villupuram District and others vs. Devi Parasuraman and others, reported in 2009(4) CTC 609, considered Section 205 of the Act in extenso and observed thus :-

"15. ... Therefore, u/s 205, if the Inspector being satisfied with the explanation drops the proceeding, he should record it in the proceeding. In case of unsatisfactory explanation or non-explanation, the Inspector cannot take a decision of his own, but required to forward the matter to the Tahsildar for the decision of the Village Panchayat. It is the Village Panchayat, which records reasons in its minutes of the meeting. Normally the Inspector has to act on such decision. In such case, reason being on record, for acceptance of such report no further reason required to be recorded by the Inspector. However, in case the Inspector differs with the decision of the Village



Panchayat, to test the reasonableness of such decision, the Inspector is not only supposed to record the reason, but also required to follow the rules of natural justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion."

19.In Devi Parasuraman [supra], the Full Bench summarised the views thus :-

"In the light of the discussions made above, we summarise our views as follows :-

i) An act of the Inspector u/s 205 is quasi-judicial in nature;

ii) If the Inspector is satisfied with the explanation submitted by the President u/s 205, he is required to record his satisfaction for dropping the proceeding; and

iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President."



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3.2. The above judgment has been followed by the Hon'ble

Division Bench of this Court in ***W.P.No.16057 of 2011*** dated ***16.09.2022***

in the case of ***B.C.Selvaraj Vs. The District Collector, Erode and ors.***

Therefore, in case the first respondent differs with the decision of the village panchayat, to test the reasonableness of such decision, the first respondent is not only supposed to record the reason, but also required to follow the rules of natural justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion. However, the first respondent failed to follow those procedures as such, the orders of the first respondent are liable to be quashed.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. On perusal of the counter filed by the respondents and on the submissions made by the learned Additional Advocate General revealed that it is the third round of litigation and the petitioner operated account No.3 under the pretext of replacing drinking water pipelines



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without obtained necessary administrative sanction from the respondents

1 & 2. Therefore, the third respondent issued an order dated 10.02.2022, thereby directing the petitioner to remit the amount which was illegally withdrawn by her.

6. The said order was challenged before this Court in W.P.No.6133 of 2022 and this Court by an order dated 13.10.2023 directed the petitioner to submit explanation for the show cause notice by 03.11.2023. Further directed that in the event of not being satisfied with the explanation submitted by the petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the petitioner to explain her position in that regard and a reasoned order shall be passed by the first respondent. With the above directions, the above writ petition was disposed of. However, the petitioner failed to submit her explanation within the stipulated time.

7. Further, the notice dated 23.10.2020 on the file of the first respondent was challenged by the petitioner before this Court in



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W.P.No.18727 of 2020 and the same was dismissed by an order dated 15.12.2020. The said proceeding was initiated with regard to allegation that the petitioner did not utilize the general fund of the village panchayat but instead unlawfully operated the account No.3 to disburse funds to private contractors, which is a clear violation of G.O.Ms.No.60 dated 16.04.2015. After dismissal of the writ petition, the petitioner was directed to remit a sum of Rs.1,93,802/- in the panchayat account. However, the petitioner did not comply the said direction.

8. Thereafter, the second respondent conducted an audit for the petitioner's panchayat and submitted report dated 28.11.2022. As per the audit report, the petitioner had misappropriated significant sums from various village panchayat accounts including the account Nos.1, 3, 5 & 9 to the tune of Rs.1.06 crores. The said amounts were disbursed without following the proper procedure including obtaining technical and administrative sanction and maintaining the necessary records. Apart from that, the petitioner illegally had disbursed more than Rs.65,00,000/- from the village panchayat accounts.



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9. The petitioner also failed to submit any records relevant to the expenditures. Therefore, the petitioner had misappropriated village panchayat funds from 01.04.2021 to 05.11.2022 to the tune of Rs. 1,65,13,599/-. Hence the first respondent issued show cause notice to the petitioner to initiate proceedings under Section 205 of the Tamil Nadu Panchayat Act, thereby calling upon the petitioner to submit her explanation, on 30.12.2022. The petitioner refused to receive the said notice and subsequently it was sent through registered post. On receipt of the said show cause notice, the petitioner failed to submit any explanation. Therefore, the third respondent ordered the Thasildar to convene meeting and submit report.

10. In the mean while, the petitioner once again approached this Court in W.P.No.22950 of 2023 seeking direction to hand over the records to submit an explanation. This Court by an order dated 29.09.2023, directed the petitioner to appear before the respondents on 13.10.2023 at 10.30 am., to peruse the documents as requested by the petitioner. Thereafter, the petitioner was directed to submit her explanation within a period of two weeks from 13.10.2023. After expiry



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of the said period, the respondents are entitled to proceed further in accordance with law. As directed by this Court, the petitioner had appeared before the second respondent on 13.10.2023 and she was allowed to peruse the records. However, she asked for copies of those documents, which were inspected by the petitioner. As directed by this Court, the petitioner is entitled to peruse the documents and not for copies of those documents. Even then, the petitioner failed to submit any explanation. Thereafter, the Thasildar convened meeting of the village panchayat, and submit report. During the meeting, out of nine ward members six were not supported the charges and two of them supported all the charges. One of the ward member refused to vote.

11. It is relevant to extract the provision under Section 205 of the Tamil Nadu Panchayat Act as under :-

“205. Removal of President-

(1)The Inspector -(a)of his own motion, or(b)on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat, is satisfied that the



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President willfully omits or refuses to carry out or disobeys any provision of this Act, or any Rule, bye-law, Regulation, or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the President to offer within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in sub-section (1) and the explanation of the President if received within the specified date with a proposal for the removal of the President for ascertaining the views of the Village Panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the President, at the office of the Village Panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the President and to all the members of the Village Panchayat by the Tahsildar at



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least seven days before the date of the meeting.

(5)The Tahsildar shall preside at the meeting convened under this section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the President by the Tahsildar under sub-section (6).

(6)If the Tahsildar 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 be not later than thirty days from the date so appointed for the meeting under sub-section (3). Notice of not less than seven clear days shall be given to the members and the President of the time appointed for the adjourned meeting.

(7)Save as provided in sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any, and the proposal for the removal of the President under this section shall not, for any reason, be adjourned.

(8)As soon as the meeting convened under this section is commenced, the-Tahsildar shall read to the Village Panchayat the notice of the Inspector and the explanation if any, of the President [and the proposal for the removal of the President] [Inserted by Tamil Nadu



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Panchayats (Amendment) Act, 1999 (Tamil Nadu Act 2 of 1999).], for the consideration of which it has been convened.[(8-A) There shall be no debate in any meeting under this section.] [Sub-section 8-A was inserted by Tamil Nadu Panchayats (Amendment) Act, 1999 (Tamil Nadu Act 2 of 1999).]

(9)The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10)The views of the Village Panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith, on the termination of the meeting, be forwarded by the Tahsildar to the Inspector.

(11)The Inspector may, after considering the views of the Village Panchayat in this regard, in his discretion either remove the President from office by notification with effect from a date to be specified therein or drop further action.

(12)The Government shall have power to cancel any notification issued under sub-section (11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13)[Any person in respect of whom a notification has been issued under sub-section (11) removing him from the office of President shall, unless the notification is cancelled under sub-section (12), be ineligible for



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election as President until the expiry of three years from the date specified in such notification as postponed by the order, if any, issued under sub-section (12).] [Sub-section (13) substituted by Tamil Nadu Panchayats (Amendment) Act, 2007 (Tamil Nadu Act 16 of 2007) w.e.f. 8th June 2007.]

12. Section 205(11) of Tamil Nadu Panchayats Act, 1994 says that on receipt of the views of the Village Panchayat in a meeting convened by the Thasildar, the Inspector of Panchayat's discretion either remove the President from Office by notification with effect from the date to be specified therein or drop further action. Therefore, the first respondent has power of discretion to remove the President of Village Panchayat though some of the members supported the President's continuance as President of Village Panchayat. Further, on the powers vested with him under Section 205(11) of the Tamil Nadu Panchayat Act, the first respondent can remove the President on his considered opinion that the President has to be removed from the post. Normally the ward members who supported the petitioner may not support the charges leveled against her. Admittedly, no enquiry was conducted by the enquiry officer. The Thasildar convened meeting among the ward



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members in respect of the charges leveled against the petitioner. If the charges leveled against the petitioner are not supported by the ward members, it doesn't mean that the charges were disproved against the petitioner.

13. As stated supra, it is the discretion of the first respondent whether to accept the views of the village panchayat or to reject it. In view of the charges leveled against the petitioner and the misappropriation committed by the petitioner, the first respondent exercised his power and removed the petitioner from the post of President. Therefore, the judgments cited by the learned Senior Counsel appearing for the petitioner are not helpful to the case on hand.

14. Further the petitioner was given opportunity to submit explanation on several occasions. Even then, the petitioner failed to use the said opportunity and did not submit any explanation for the charges. That apart, the petitioner was directed to remit a sum of Rs.7,78,000/- and also a sum of Rs.1,93,802/- to the panchayat accounts. However, both the directions are not complied with by the petitioner. In view of the



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audit report totally, the petitioner misappropriated the village panchayat funds to the tune of Rs.1,65,13,599/- from 01.04.2021 to 05.11.2022.

Further the petitioner failed to maintain proper records, including vouchers, estimates, tender documents and measurement books.

Therefore, the restraining order was passed by the respondent to freeze several village panchayat accounts including account Nos.1,2,7,8,9 and 11, thereby restraining the petitioner from operating the account.

Therefore, the petitioner had committed several illegality including misappropriation of huge funds of the Palayaur village panchayat.

15. In fact, the petitioner's husband acted on behalf of her as President and he obstructed the official inspection of Anaithu Grama Anna Marumalarchi Thittam work leading to a confrontation with the Assistant Engineer (Rural Development) and the contractor. In this regard, on 21.10.2022, a special Grama Sabha meeting scheduled to discuss the social audit under Mahatma Gandhi National Rural Employment guarantee Scheme and the same was disrupted by the petitioner's husband as such it was cancelled. Therefore, a complaint was lodged as against the petitioner's husband before the Inspector of Police,



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Thachampattu Police Station on 21.10.2022. However, no action was taken as such the third respondent lodged complaint before the Superintendent of Police, Tiruvannamalai on 14.12.2022. Subsequently, the petitioner was served with show cause notice to initiate proceeding under Section 205(11) of the Tamil Nadu Panchayat Act.

16. In view of the above discussions, this Court finds no infirmity or illegality in the orders passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.10.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



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1. The Inspector of Panchayat cum
District Collector,
Thiruvannamalai District.
2. The Assistant Director of Panchayat
Thiruvannamalai District,
Thiruvannamalai.
3. The Block Development Officer
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