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W.P.No.33337 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**Writ Petition No.33337 of 2024
and WMP No.36122 of 2024**

K.Krishnasamy

....

Petitioner

-Vs-

1.Secretary to the Government
Rural Development and Panchayat Raj
Department
Secretariat, Chennai 600 009.

2.The District Collector
Office of Collectorate
Cuddalore.

.. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the order of the 2nd respondent in Na.Ka.No.A5/965/2024 dated 02.09.2024 quash the same.

For Petitioner : Mr.P.Satheesh Kumar

For Respondents : Mr.V.Nanmaran
Additional Government Pleader



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ORDER

The learned counsel for the petitioner started his arguments stating that this Court had not granting opportunity. Therefore, further opportunity had been granted to him for nearly 15 minutes to present his case both in English and Tamil. He had appeared through Video Conferencing and at the conclusion, the Court also satisfied itself that sufficient opportunity had given to the learned counsel.

2.The writ petition has been filed in the nature of a Certiorari seeking records of the 2nd respondent-the District Collector, Cuddalore in Na.Ka.No.A5/965/2013 dated 02.09.2024 and to quash the same.

3.In the affidavit filed in support of the writ petition, the writ petitioner K.Krishnasamy, who claims to be the Union Councillor for Ward No.26 in Cuddalore Block and Cuddalore District stated that he had been elected as Union Councillor in the elections conducted on 27.12.2019 for Ward No.26 which included Vellakarai Panchayat and Kodukkanpalayam Panchayat. It is stated that the population comes around fifteen thousand people.



4.It had been stated that on 05.07.2024, the Cuddalore Union Panchayat had called for a meeting headed by the Union Chairman and fifty resolutions were placed before the Union Councillors. The resolutions were in respect of laying roads in fifty places. They were all unanimously approved by the Councillors including the Chair person. It had been contended when the resolutions were forwarded to the Government, the 2nd respondent - the District Collector, Cuddalore had, without following the principles of natural justice and without calling for any enquiry had passed the order which is impugned in the writ petition on 02.09.2024 in Na.Ka.No.A5/965/2024, cancelling the entire tender for laying of roads in the Villages. The District Collector had stated in the impugned order that there was misappropriation of funds and there was violation of rules. Questioning that particular order of the District Collector, the present writ petition has been filed.

5.The learned counsel for the petitioner appeared through Video Conferencing and first pointed out the provision under Section 202 of the Tamil Nadu Panchayats Act, 1994 and stated that before passing any order, it is imperative for the District Collector to issue notice and thereafter, provide an opportunity of being heard to the petitioner and other members of the Panchayat



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and only thereafter could the order be passed. The learned counsel also placed reliance on the certificate issued by the Block Development Officer [BDO], wherein the BDO had stated that there are funds to an extent of Rs.3,29,50,168/- in the Panchayat Union at Cuddalore. Placing reliance on the said certificate issued by the BDO, the learned counsel insisted that since funds were available and since resolutions had been passed unanimously by the Panchayat, the amount available should be used to put into effect the said resolutions passed to lay roads. It was again stated that once lawful resolutions had been passed, the 2nd respondent cannot interfere with the same and cannot cancel the resolutions or the tenders which had been called for.

6. On the other hand, it is contended on behalf of the respondents, who had also received written instructions that in the said Panchayat, the general fund available as on 30.6.2024 was Rs.83,61,598/. It had been stated that with respect to the tenders floated by two earlier orders, amounts have not been paid to the renderers and there was a negative balance of Rs.4,64,93,195/- and it had been stated that unless those amounts are paid, further amounts cannot be sanctioned. It had been further stated that pursuant to the resolutions, tenders were also called for but after the impugned order had been passed, though 39



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individuals had participated in the tender, none of them had raised objections. It had been contended that the participants in the tender are the persons who are directly affected but they had not come forward to raise any objections. It had also been further stated that Show Cause Notices had been issued to the Block Development Officer, to the Deputy Block Development Officer and also to the Accountant of the Village Panchayat calling for explanation as to how they had permitted the resolutions to be passed and also approve the same particularly when there was a deficit funds of Rs.4,64,93,195/-. It had been also stated that the funds which are to be sanctioned will have to be used for upgrading the facilities to prevent the spread of Dengue. It had also been stated that out of the funds already sanctioned, amounts are required to be spent and therefore, the resolutions passed could not be put into effect and therefore exercising his authority and power, the 2nd respondent had cancelled the said resolutions.

7.The learned counsel for the petitioner placed reliance on the judgement reported in (2012) 1 LW 505, *Kodanthur Village Panchayat, through its Vice President, Aravakurichi Taluk, Karur District District and Others .Vs. M/s.Supreme Poultry Private Limited, Rep.by its Chairman and Others*. The Division Bench in a Writ Appeal, it was observed that when any order is passed



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under Section 202 of the Tamil Nadu Panchayats Act, 1994, an obligation is placed on the Inspector of Panchayat, viz., the District Collector, to give an opportunity to the person who is likely to be affected either in the cancellation of the license or in the suspension of a resolution. In that particular Writ Appeal, it was observed that the District Collector therein/Inspector of Panchayat had not given any opportunity.

8. Even in the written instructions forwarded, the respondents had extracted the relevant provisions. Therefore, it cannot be doubted whether the District Collector was aware or not aware of the provisions. He was certainly aware of the provision. He had also quoted Section 203 of the very same Act. Section 203 of the said Act, gives emergency power to the Inspector of Panchayat/Collector in cases of emergency to provide for execution of any work or doing of any Act which a Panchayat or Executive Authority of Commissioner or Secretary is empowered to execute any act which is necessary for the safety of the public. Section 203 of the Tamil Nadu Panchayats Act, 1994 is extracted for better reference.



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203 : Emergency Powers of Collector and Inspector:

Subject to such control as may be prescribed, the Inspector or the Collector may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act which a Panchayat or Executive Authority or Commissioner or [Secretary] [See Rules issued in G.O. Ms. No. 148, Rural Development (C4), dated 31st May, 2001 and published in Part III, section 1(a), of the Tamil Nadu Government Gazette Extraordinary, dated 1st June, 2001.] is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the safety of the public and may direct that the expense of executing such work or doing such act shall be paid by the person having the custody of the Village Panchayat Fund or the Panchayat Union (General) Fund or the District Panchayat (General) Fund in priority to any other charges against such Fund except charges for the service of authorised loans.

9.It would also be appropriate to also extract Section 202 of the Tamil Nadu Panchayats Act, 1994, in entirety.

202.Power to suspend or cancel resolution, etc. under the Act.

(1) The Inspector may, by order in writing,

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance, or under colour, of this Act, if in his opinion, -



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(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that nothing in this sub-section shall enable the Inspector to set aside any election which has been held.

(2) The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation.

(3) The power conferred on the Inspector under clause (c) of sub-section (1) may be exercised by the Collector in accordance with the provisions of that clause.

10. The learned counsel had placed reliance on Section 202(2) wherein an obligation was placed as opined by the Division Bench, to give an opportunity for explanation.

11. It is trite to point out that the funds of the District are controlled by the Revenue and the District Collector is head of the administration and custodian of



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the funds. He also has an other role to act *viz.*, as Inspector of Panchayats. As Inspector of Panchayats, the District Collector has a duty to ensure that when resolutions are passed they can be put into effect and when particularly matters of public are involved and State finances are involved, the resolutions are passed by the Village Panchayat keeping in mind the availability funds and the amounts which are liable to be expended for works already executed and for those which are to be executed.

12.In the instant case, all the Union Council members under the Chairmanship of the Union Chairman had sat down and passed fifty resolutions, and claim that the resolutions must be into effect. There must be a realistic understanding of the availability of funds.

13.In the written instruction forwarded, the District Collector had specifically stated that there is a negative balance of Rs.4,64,93,195/. It had also been stated that in the general fund an amount of Rs.83,61,598/- alone is available. The amount involved in the fifty resolutions which had been passed is about Rs.3.98 crores. The learned counsel placed reliance on the statement given by BDO. It is to be pointed out that the BDO is not to the custodian of the funds.



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It is the District Collector who is the custodian of the funds. The BDO is more or like an accounts keeper. He has to ensure that when resolutions are passed they can be executed with the available funds. In the instant case, the BDO had issued a certificate. A show cause notice had been issued by the District Collector and it is now an issue between the BDO and the District Collector. The Court cannot be examine the certificate issued by the BDO since this act of issuing such certificate had been the cause for the District Collector to issue show cause notice.

14.The petitioner and the other members of the Panchayat must realised that owing to their rash resolutions passed, the services of the BDO is in line. The petitioner and other members of the Panchayat would not be affected in any manner whatsoever. But if the respondents or the BDO or the Accountant of the Panchayat, had exceeded their powers in issuing such certificate then, their continuation a service as BDO or in any other post would be in question. They will be the actual suffers of this resolution passed by the Village Panchayat. The Panchayat members must act with responsibility have a sense of duty towards the funds available and ensure that resolutions are passed keeping in mind the availability of funds and the necessity for execution of such works.

15.The learned counsel for the petitioner had also placed reliance on the



judgement of a learned Single Judge of this Court in *WP(MD).No.1908 of 2014, R.Kannan .Vs. The District Collector, Dindigul District and Others*, by an order dated 17.11.2016. The learned Single Judge had placed reliance on earlier judgement of this Court reported in 2006 4 ML 1097, in *U.Deivasigamani .Vs. Tmt.Ranjitham and Others*, and examined the provisions of 202 (2) of the Tamil Nadu Panchayat Act, 1994 and had also stated that necessary opportunity must be granted. Even the Division Bench had opined the same but, neither of the two judgements have placed reference to Section 203 of the said Act which grants emergency powers to the District Collector not only to execute the work but more importantly, to do any act which he is empowered to do for the safety of the public and towards the expenses of executing such work. The money which is involved for which resolutions had been passed is public money. It has come over to the Village Panchayat from the taxes paid by the general public. The District Collector has a duty to ensure that such amounts are not frittered away in the whims and fancies of the Panchayat. Merely because all of them sat and pass resolutions together does not mean that the resolutions should be put into effect without any demur.

16.The District Collector has every authority to exercise his powers under



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Section 203 of the Tamil Nadu Panchayat Act, 1994, and to interfere in such instances particularly when, in the impugned order he had used the words, '*misappropriation of funds*'. These allegations require enquiry to be conducted. A show cause notice has already been issued to the BDO. Let the matter proceed. It is also pointed within three days of the passing of the resolution tenders were called for giving an impression that the renderers already been put in place and thereafter resolutions have been passed. I am not inclined to issue any certiorari. Writ Petition stands dismissed.

17.The Writ Petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
NCS : Yes/No
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- To
1. Secretary to the Government
Rural Development and Panchayat Raj
Department
Secretariat, Chennai 600 009.
 2. The District Collector
Office of Collectorate
Cuddalore.

C.V.KARTHIKEYAN.,J



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