



W.P(MD)No.11597 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11597 of 2024

and

W.M.P.(MD)Nos.10326 and 10327 of 2024

Kantha Roopi

... Petitioner

Vs.

1.The State Represented by its,
Secretary to Government,
Rural Development and Panchayat Raj Department,
Fort St.George, Chenna - 600 009.

2.The District Collector,
District Programme Co-originator,
Madurai.

3.The Block Development Officer (Village Panchayats),
Usilampatti Panchayat Union, Usilampatti,
Madurai District.

4.The Assistant Director of Rural Development (Audit),
Madurai – 20.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders dated 14.02.2023 in Na.Ka.No.150/2023/A3 and subsequent orders, dated 23.02.2024 in Na.Ka.No.150/2023/A3, passed by the 4th respondent and the connected



W.P(MD)No.11597 of 2024

impugned order, dated 24.04.2024 in Na.Ka.No.50/2023/Thi3 passed by the 3rd respondent and quash the same and consequently directing the 4th respondent to conduct proper enquiry in compliance of the order dated 01.12.2022 passed by this Court in WP(MD).No.8172 of 2015.

For Petitioner : Mr.V.Nagendran

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard both sides. Mrs.A.Aahila, Assistant, working in the office of the Assistant Director (Audit), Rural Development, Madurai is present in person to assist the Court.

2.This is second round of litigation. The Block Development Officer (Village Panchayat), Usilampatti issued surcharge certificate dated 06.03.2015 against the writ petitioner. Challenging the same, the petitioner filed W.P.(MD)No.8172 of 2015. The writ petition was allowed by this Court on 01.12.2022 in the following terms:-

“The present writ petition has been filed by the President of a Village Panchayat challenging an order passed by the Inspector of



W.P(MD)No.11597 of 2024

Panchayat/District Collector, under which he has directed the writ petitioner to deposit a sum of Rs.2,03,816/- (Rupees Two Lakh Three thousand Eight Hundred and Sixteen only) on the basis of a audit objection raised by the authorities.

2. Whenever there is an allegation of any misappropriation of money or property of the President of the Village Panchayat or the Panchayat Union, the District Collector has to invoke Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000. As per the said rules, the Assistant Director of Rural Development (Audit) is the authority to conduct an enquiry after giving due notice to the writ petitioner. After conducting an enquiry, he should issue surcharge certificate. Only based upon the surcharge certificate, the same can be executed by the Inspector of the Panchayat, namely the District Collector. However, in the present case, without conducting any enquiry by the Assistant Director of Rural Development (Audit) or issuance of surcharge certificate, the present impugned order has been passed.

3. In view of the above said facts, the order impugned in the writ petition is set aside. The 2nd respondent is at liberty to initiate proceedings as contemplated under Sections 3 and 4 of the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000.

4. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.”

Thereafter, the fourth respondent herein issued notice dated 14.02.2023.

Challenging the same and the subsequent orders, the present writ petition came to be filed.



W.P(MD)No.11597 of 2024

3.The notice dated 14.02.2023 impugned in this writ petition reads as

follows:-

//பதிவுத்தபாலில்//
உதவி இயக்குநர்(தணிக்கை) அலுவலகம்
மதுரை-20
நாள்- .02.2023

நகராண் 150/2023/அ3

விளக்கம் கோரும் அறிவிப்பு

பொருள் சமூகத் தணிக்கை-மதுரை மாவட்டம்-உசிலம்பட்டி ஊராட்சி ஒன்றியம்-கல்லூத்து கிராம ஊராட்சி முன்னாள் தலைவர் காந்த ரூபி (திருமதி) என்பவர் மதுரை உயர்நீதி மன்ற கிளையில் வழக்கு தொடர்ந்தது- உயர்நீதிமன்ற உத்தரவு பிறப்பிக்கப்பட்டது- இழப்புத் தொகை ரூ.203816/-னை எடுசெய்ய அறிவிப்பு விடுத்தல்-தொடர்பாக

பார்வை 1.உயர்நீதி மன்ற மதுரை கிளை வழக்கு எண் WP(MD) No-8172 of 2015 உத்தரவு, நாள்-19.12.2022
2.மாவட்ட ஆட்சித் தலைவர் அவர்களின் அனுமதி நாள்-10.02.2023

மதுரை மாவட்டம், உசிலம்பட்டி ஊராட்சி ஒன்றியம் கல்லூத்து ஊராட்சியில் ஊராட்சி மன்றத் தலைவராக தாங்கள் பணிபுரற்றிய காலத்தில் சமூகத் தணிக்கையின் போது எழுப்பப்பட்ட தணிக்கைத் தடைப்பத்திகளின் மீது செலுத்த தெரிவித்த ரூ.203,816/- இழப்புத் தொகைக்கு, சென்னை உயர்நீதி மன்றம் மதுரை கிளையில், வழக்கு தொடர்ந்துள்ளீர்கள்.

தற்பொழுது வழக்கு மீதான உத்தரவு பிறப்பிக்கப்பட்டு, பார்வையில் காணும் விபரப்படி கீழ்க்காணுமாறு உத்தரவிடப்பட்டுள்ளது.

Whenever there is an allegation of any misappropriation of money or property of the President of the village panchayat or the Panchayat union, the District Collector has to invoke Tamilnadu Panchayats(Surcharge, Disallowance and Charge) Rules, 2000. As per said rules, the Assistant Director of Rural Development (Audit) is the authority to conduct an enquiry after giving due notice to the Writ petitioner.

After conducting an enquiry, he should issue the surcharge certificate. Only based upon the surcharge certificate, the same can be executed by the Inspector of the Panchayat, namely the District Collector.



W.P(MD)No.11597 of 2024

1121

மேற்காணும் விபரப்படி தாங்கள் இழப்பீடு தொகையினை ஈடு செய்தி உத்தரவிடப்பட்டுள்ளது. அப்படி இழப்பினை திரும்ப செலுத்தாத நிலையில், தண்டச்சான்று பிறப்பித்தி உத்தரவிடப்பட்டுள்ளது.

எனவே, இக்கடிதம் கிடைக்கப்பெற்ற 15 தினங்களுக்குள் பத்தியின் இழப்பீடாக குறிப்பிடப்பட்ட தொகையினை சம்பந்தப்பட்ட ஊராட்சியின் வங்கிக் கணக்கில் செலுத்தி அதற்கான அசல் சலான் மற்றும் வாவு எடுக்கப்பட்ட ~~மதிப்பீடுகளை~~ ^{2182வ்3ஆம்} இவ்வலுவலகத்தில் சமர்ப்பிக்க இதன் மூலம் தங்களுக்கு தெரிவிக்கப்படுகிறது.

தவறும் பட்சத்தில் நிதிவிழப்பிற்கு தாங்கள்தான் காரணமாக இருந்துள்ளீர்கள் எனக்கருதி 1994 ஆம் ஆண்டு தமிழ்நாடு ஊராட்சிகள் சட்டம் பிரிவு 242 (2) -ன் படி தொகையை ஈடுசெய்ய தங்கள் மீது சர்ச்சாஜ் நடவடிக்கை மேற்கொள்ளப்படும் என்று விபரம் தெரிவிக்கப்படுகிறது.

30
உதவி இயக்குநர்(நணிக்கை)
மதுரை
14/2/2023

38
14-2-23

பெறுநர்

திருமதி கார்த்திகா ருபி,
முன்னாள் ஊராட்சி மன்றத் தலைவர்,
கல்லூர்த்து ஊராட்சி,
உசிலம்பட்டி ஊராட்சி ஒன்றியம்,
மதுரை.
(குனியருக்கு சார்பு செய்து சார்பு நகல் அனுப்பி தெரிவிக்கப்படுகிறது)

நகல்

வட்டார வளர்ச்சி அலுவலர்(கி.கல)
உசிலம்பட்டி ஊராட்சி ஒன்றியம்

அனுப்பப்பட்டது
நாள் 17-2-23

1



W.P(MD)No.11597 of 2024

4.This is a classic case as to how a notice should not be issued. In the impugned notice, apart from reiterating the earlier order passed by this Court, straightaway calls upon the noticee to pay the surcharge amount. The earlier order passed by this Court after quashing the earlier surcharge certificate had called upon the authority concerned to issue fresh notice, hold enquiry and thereafter pass order. Instead of doing so, straightaway, the impugned order came to be passed. I do not know if such an order was passed to facilitate the petitioner to obtain one more order in his favour. Since I have not heard the Assistant Director (Audit), Madurai in person, I refrain from casting any aspersion on him. But I make it clear that the fourth respondent seriously erred in issuing such a notice.

5.The question that calls for consideration is whether on this sole ground, I should interfere with the impugned order and the subsequent orders passed by the respondents 3 and 4. I am not here to mechanically apply the principles of natural justice. I must see if the petitioner was given a fair opportunity.

6.The original file has been made available before me. During the relevant time (2013 – 2014), what is popularly known as “100 days employment guaranteed scheme” was implemented by remitting the amount



W.P(MD)No.11597 of 2024

disbursed by the Central Government through the district rural development agency directly in the account of the concerned panchayat. The panchayat president would withdraw the same by issuing a self cheque as he / she was the executive authority of the local body and disbursed the funds. Now this lacuna has been plugged by directly remitting the wages in the bank accounts of the concerned employees / beneficiaries.

7.The work is supposed to be implemented by conforming to the provisions of Mahatma Gandhi National Rural Employment Guarantee Act, 2005. The Act contemplates conducting social audit. The social audit was conducted in the present case also and it pointed out quite a few defects. The prime defect being that even dead persons were shown as beneficiaries. The persons who did not carry the job cards were also beneficiaries. The petitioner herein was furnished with a copy of the said social audit report. That has been filed by the petitioner herself at Page Nos.1 to 11 in the typed set of papers filed by her in W.P.(MD)No.8172 of 2015. On 14.02.2023, notice was issued to the petitioner herein calling upon her to attend the enquiry on 10.05.2023. On 12.05.2023, the petitioner informed the fourth respondent that the notice was received by her only on 10.05.2023 and sought further time. Thereafter, on 06.06.2023, a fresh notice was issued. Copies of the said notices are found in



W.P(MD)No.11597 of 2024

the file maintained by the respondents. I must observe that the notice dated 04.05.2023 as well as 06.06.2023 are in order. The petitioner in her explanation dated 16.06.2023 made it clear that only the work site supervisor and the project incharge were responsible for the disbursement of the funds. The petitioner had merely signed the files brought by the work site supervisor. As per Rule 4 of Tamil Nadu Panchayats (Surcharge Disallowance and Charge) Rules, 2000, the auditor is empowered to issue surcharge certificate; he / she must issue show cause to the person concerned calling upon him to state his defence in writing. In this case, even though the first notice dated 14.02.2023 is defective, subsequent notices dated 04.05.2023 and 06.06.2023 are in order. The petitioner was very much given opportunity to state her defence. The petitioner was given the opportunity of personal hearing. The petitioner chose not to appear for personal enquiry. The petitioner's so-called defence is found in her explanation dated 16.06.2023. The petitioner simply washes her hands of. She wants to put the entire blame on the work site supervisor and the project incharge. The petitioner as the president of the local body was the executive authority. The total number of residents would hardly be around 1500. The petitioner ought to have bestowed greater care and responsibility. It is seen that in the names of dead persons, amounts had been disbursed. Persons who were not holding job cards had been paid. It is obvious that the object of



W.P(MD)No.11597 of 2024

the scheme was frustrated. It is the petitioner who is squarely responsible for the same. The surcharge certificate was rightly issued and I do not find any reason to interfere. I place on record the appreciation for the excellent assistance rendered by Mrs.A.Aahila, Assistant.

8.This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.06.2024

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

To:-

- 1.The Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
District Programme Co-originator,
Madurai.
- 3.The Block Development Officer (Village Panchayats),
Usilampatti Panchayat Union, Usilampatti,
Madurai District.
- 4.The Assistant Director of Rural Development (Audit),
Madurai – 20.



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W.P(MD)No.11597 of 2024

G.R.SWAMINATHAN, J.

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W.P(MD)No.11597 of 2024

07.06.2024