IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

WP No. 559 of 2025
AND WMP NO. 675 OF 2025

1. K.Shivakumar
S/o.Kaliannagounder, No.146/ 4,
Assisi Hospital Near, Akkaraikodiveri,
Gobi Taluk, Erode District.

Petitioner(s)

Vs

1. The District Collector / Inspector Of Panchayat, Erode District.
2.Assistant Director Of Rural Development (audit)
Erode District.
3.Block Development Officer (v.P)
T.N.Palayam, Gobi Taluk, Erode District.

Respondent(s)

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(audit)
Erode District.

3.Block Development Officer (v.P)
T.N.Palayam, Gobi Taluk, Erode District.

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PRAYER

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 2nd respondent in Surcharge Certificate in na.Ka. 2010 / 2024A4 dated 06.12.2024 and quash the same and to consequently remand back to the 2nd respondent to hold fresh enquiry in accordance with Rule 4 (1) of The Tamil Nadu Panchayat (Surcharge, Disallowance and Charge) Rules 2000 law.

For Petitioner(s): Mr.L.P.Shamugasundaram

For Respondent(s): Mr. V.Manoharan, AGP For R1 and R2
Mr. S.J.Mohamed Sathik, GA For R3

ORDER

(1)The above writ petition is filed for a writ of certorarified mandamus calling for the records of the 2nd respondent in Na.Ka.No.2010/2024/A4 dated 06.12.2024 with a prayer to quash the same and consequently, to remand the matter back to the 2nd respondent for fresh enquiry in accordance with Rule 4[1] of the Tamil Nadu Panchayat [Surcharge, Disallowance and Charge] Rules, 2000.

(2)The petitioner was elected as the President of Akkaraikodiveri Village Panchayat and was holding the post from 05.01.2019 till 04.01.2024. While so, the 2nd respondent issued a show cause notice on 26.09.2024 to the petitioner calling for his explanation to the surcharge proceedings. The said notice was issued on the basis of the Special Audit Report and in connection with the Financial Years 2020-2021, 2021-2022 and 2022-2023 for the expenditure incurred by the

Panchayat.

(3)The petitioner states that the 2nd respondent did not serve the Special Audit Report while issuing the show cause notice and therefore, he submitted a representation to the 2nd respondent on 09.10.2024 to furnish the BDO's Report, Audit Report, Special Audit Report and the Accounts Statements for FY 2020-21, 2021-22 and 2022-23. Since no response was forthcoming from the respondents, the petitioner again submitted a representation on 24.10.2024 seeking copies of the aforesaid documents. Even then, there was no response and therefore, the petitioner submitted another representation on 08.11.2024, with the same request. The petitioner states that the 2nd respondent, without furnishing the documents sought for by the petitioner, passed the impugned Surcharge Certificate in violation of Rule 4[1] of the Tamil Nadu Panchayat [Surcharge, Disallowance and Charge] Rules, 2000 [hereinafter referred to as 'the Rules, 2000']. Aggrieved by the impugned Surcharge Certificate, the petitioner has filed the present writ petition with aforesaid prayer.

(4)The respondents filed counter affidavits stating *inter-alia* that though the petitioner was given ample opportunities to submit his explanation to the show cause notice issued by the 2nd respondent, the petitioner failed to avail the opportunities. The respondents denied as untenable the contention of the petitioner that the impugned Surcharge Certificate was issued in violation of Rules 4[1] of the Rules, 2000. The respondents further stated that the writ petition was not maintainable because the petitioner failed to exhaust the alternative remedy of appeal under Rule 5 of the Rules, 2000. For the aforesaid reasons, the respondents prayed for dismissal of the writ petition.

(5)The learned counsel for the petitioner, referring to the representations submitted by the petitioner, submitted that the documents requested by the petitioner were not furnished and for want of those relevant documents, the petitioner was unable to submit his reply. The learned counsel submitted that the respondents were bound to follow Rule 4[1] of the Rules, 2000 before issuing the impugned Surcharge Certificate. Learned counsel relied upon a judgment of this Court reported in ***2020 SCC Online Mad 15009 [A.V.Govindaraj Vs. The District Collector and Others]*** in support of his contentions.

(6)The learned counsels appearing for the respondents, reiterated the contentions raised in the counter affidavits.

(7)Heard both sides and perused the materials placed on record. With consent of learned counsels on both sides, the writ petition is disposed of at the admission stage.

(8)The facts are undisputed. The petitioner was issued with a show cause notice by the 2nd respondent on 26.09.2024. In reply to the show cause notice, the petitioner sought for the statements of Accounts for the FY 2020-21, 2021-22 and 2022-23, the Audit Report of the 3rd respondent and the Special Audit Report, so as to enable him to submit his reply. According to the petitioner, even though the 2nd respondent, received the said representations, he did not furnish the documents requested by the petitioner. However, the 2nd respondent issued the impugned Surcharge Certificate demanding a sum of Rs.1,94,46,412/- from the petitioner for the loss caused to the Panchayat.

(9)Rule 4 of the Tamil Nadu Panchayat [Surcharge, Disallowance and Charge] Rules, 2000 reads as follows:-

> *"**4:-Issue of Surcharge Certificate:-***
>
> *[1]The Auditor who is empowered to issue a Surcharge Certificate, before issuing a Surcharge Certificate, shall give a show cause notice to the person concerned, calling upon him to state his defence about the proposed notice in writing within a specified time which shall not be less than fifteen days. If such person desires to be heard in person, the opportunity of personal hearing shall be given by the Auditor. In such personal hearing, the Auditor shall record the proceedings of such hearing. The Auditor shall issue Surcharge Certificate after taking into consideration the representation, if any, given by the*

person concerned and the proceedings by the personal hearing. The show cause notice and the Surcharge Certificate shall be in Tamil version."

(10)Upon reading of the Rule, it is clear that the petitioner ought to have given an opportunity to reply to the show cause notice. The petitioner is also entitled to an opportunity of personal hearing. There is no consensus on the issuance of the documents requested by the petitioner. Be that as it may, the petitioner in his letter dated 08.11.2024, apart from requesting the documents which formed the basis of the show cause notice and the special audit report, also prayed for an opportunity of personal hearing. The respondents, it appears, permitted the petitioner to pursue the required documents in the BOD's office by their communication dated 09.11.2024 and thereafter, even without affording an opportunity of hearing to the petitioner, passed the impugned order on 06.12.2024. Assuming that the petitioner failed to reply even after perusing the documents, the respondents ought to have given him an opportunity of hearing thereafter as he specifically sought for personal hearing. Since personal hearing as mandated by Rule 4[1] of the Rules, 2000, was not afforded to the petitioner despite a specific request, I hold the impugned order is invalid and violative of provisions of Rule 4[1] of 2000 Rules.

(11)Therefore, the impugned Surcharge Certificate cannot be sustained and hence, it is set aside. In any event, the matter is remanded to the 2nd respondent for fresh consideration, with the following directions:-

(a) The 2nd respondent shall furnish to the petitioner, copies of the Statements of Accounts for the Financial Years 2020-2021, 2021-2022 and 2022-2023, the Audit Report of the 3rd respondent and the Special Audit Report within a period of two weeks from the date of receipt of a copy of this order.

(b) On receipt of the aforesaid documents, the petitioner shall submit his reply to the show cause notice within fifteen days thereafter.

(c) On receipt of petitioner's reply, the 2nd respondent shall follow the procedure contemplated under Rule 4[1] of the Tamil Nadu Panchayat [Surcharge, Disallowance and Charge] Rules, 2000 and thereafter, pass orders on merits and in accordance with law.

(d) In case, the aforesaid documents are voluminous, the petitioner shall bear and pay the necessary charges for the copies.

(1)The writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

08-07-2025

AP

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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N.MALA J.

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