

(2011) 01 MAD CK 0229

In the Madras High Court

Case No : W.A. (MD) . No. 579 of 2010 and M.P. No. 1 of 2010

C. Ashokkumar, Vice President, Mannor Village Panchayat APPELLANT
Vs

The District Collector/ Inspector of Panchayats, The Assistant RESPONDENT
Director (Panchayats), The Block Development Officer
(Village Panchayat), Thoppampatty Panchayat Union and The
President/Executive Officer, Mannor Village Panchayat

Date of Decision : 05-01-2011

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 188(3), 203, 206

Citation : (2011) 01 MAD CK 0229

Hon'ble Judges : R. Subbiah, J;N. Paul Vasanthakumarand, J

Bench : Division Bench

Advocate : R. Venkateswaran, for the Appellant; M. Rajarajan, Government Advocate for Respondents 1 and 2 and K. Balasubramanian, Additional Government Pleader for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—By consent, the main Writ Appeal is taken up for final disposal.

2. This Writ Appeal is directed against the order of the learned Single Judge dated 24.08.2010 made in W.P.(MD). No. 11475 of 2009.

3. The Appellant filed W.P.(MD). No. 11475 of 2009 challenging the order passed by the first Respondent dated 02.11.2009 dispensing with the

cheque signing power of the Appellant as the Vice President of Manoor Village Panchayat and for a consequential direction to the first Respondent

to restore his cheque signing power.

4. The case of the Appellant is that he is the Vice-President of Manoor Village Panchayat. The first Respondent, by order dated 18.06.2009,

passed an order divesting the power of cheque signing, which he is entitled to sign along with President of the Village Panchayat u/s 188 of the

Tamil Nadu Panchayats Act, 1994 [hereinafter referred to as "the Act"]. The said order was challenged by the Appellant in W.P.(MD). No. 5547

of 2009. This Court, by order dated 16.09.2009, allowed the said Writ Petition by following a judgment of a Division Bench of this Court in the

case of Pugazhendran President, Brammapuram Village Panchayat, Katpadi Panchayat Union Vs. B.G. Balu, The District Collector, (Inspector of

Panchayats) and The Government of Tamil Nadu, and held that the power vested with the Vice - President of the Village Panchayat to act as a

co-signatory to the cheques to be signed for and on behalf of the Panchayat cannot be taken away without affording an opportunity or without

issuing a notice. As no notice having been issued to the Appellant before taking away the power of cheque signing, the impugned order, which was

the subject matter of challenge in W.P.(MD). No. 5547 of 2009, cannot be sustained, and accordingly, the said order was set aside and the

matter was remitted back to the first Respondent with a direction to issue fresh notice to the Appellant clearly setting out the allegations levelled

against the Appellant and the reasons as to why the first Respondent proposed to invoke power u/s 206 of the Act, and thereafter, the Appellant

was directed to submit his objections and after considering the objections, the first Respondent was directed to pass appropriate orders on merits

and in accordance with law within a period of six weeks from the date of receipt of a copy of the order.

5. After the disposal of the said Writ Petition, the Appellant was issued with a notice on 07.10.2009 calling upon him to appear for an enquiry

without mentioning any allegation, which the Appellant has to face. The Appellant filed W.P.(MD). No. 10370 of 2009 for issuing a Writ of

Mandamus forbearing the second Respondent from conducting enquiry relating to the proceedings dated 07.10.2009 till the disposal of the

proceedings dated 21.07.2009. However, on 14.10.2009, the said Writ Petition was withdrawn and liberty was granted to the Appellant to file a

fresh Writ Petition, if he is aggrieved by any order to be passed. The Appellant, without knowing the allegations levelled against him, submitted a

representation on 15.10.2009. The first Respondent passed an order on 02.11.2009 again and divested the cheque signing power of the

Appellant. The said order was challenged by the Appellant in W.P.(MD). No. 11475 of 2009. By order dated 24.08.2010, the said Writ Petition

having been dismissed, the Appellant preferred the present Writ Appeal.

6. Heard the learned Counsel appearing for the Appellant, learned Government Advocate appearing for Respondents 1 and 2 and the learned

Additional Government Pleader appearing for the third Respondent. The fourth Respondent has not chosen to appear, in spite of service of notice

on 30.09.2010.

7. On perusal of the notice issued to the Appellant, it is evident that no allegation, which the Appellant has to face, has been mentioned. It is an

elementary principle of law that a show cause notice issued to a person before taking any action, must contain the allegations levelled against him in

a specific manner so that he will be in a position to controvert or deny the allegation. Without making any imputation merely calling a person to

appear for an enquiry is in violation of the principles of natural justice. The earlier order passed by the learned Single Judge Court dated

16.09.2009, which was accepted by the first Respondent, clearly states that the first Respondent shall issue a fresh notice to the Appellant clearly

setting out the allegations levelled against him and the reason as to why the first Respondent proposed to invoke power u/s 206 of the Act, and

thereafter, the Appellant shall be entitled to submit his objections and after considering the objections, the first Respondent shall pass appropriate

orders on merits and in accordance with law. The first Respondent cannot ignore the said direction, which was issued in compliance with the

principles of natural justice. The notice dated 07.10.2009 was issued to the Appellant subsequent to the order dated 16.09.2009 passed by the

learned Single Judge. Translated version of the said notice dated 07.10.2009 reads as follows:

Na.Ka.No.4030/2009/A4 Assistant Director (Panchayats),

Dindigul, dated 07.10.2009.

Urgent Memo

Subject: Enquiry - Thoppampatti Panchayat Union - Manoor

Panchayat - notice issued to appear for enquiry

before the District Collector, as ordered by the

Madurai Bench of Madras High Court, Madurai, in respect of cancellation of cheque signing power of the Vice - President reg;

Ref:- (1) Madurai Bench of Madras High Court W.P.(MD).No.5547/2009/19P(MD).No.2 of 2009.

(2). Proceedings of the District Collector, Dindigul dated 27.09.2009.

In the order passed by the Madurai Bench of Madras High Court, Madurai, in Writ Petition, under reference first cited, against the withdrawal of the cheque signing power of the Vice - President, Manoor Panchayat, the Madurai Bench of Madras High Court has issued a direction to give an opportunity to the Vice - President.

Accordingly, on 12.10.2009 at 04.00 PM, it is decided to conduct an enquiry by the District Collector. Therefore, it is informed that steps shall be taken for the participation of the President, Manoor Panchayat, Vice President, Manoor Village Panchayat and Ward councillors in the said meeting and inform the outcome of the meeting.

Signed Assistant Director (Panchayats) Dindigul.

8. The idea behind the issuance of notice in any proceeding is to put on notice as to what are imputations against the person concerned. The first

Respondent, who is discharging a statutory power vested in him u/s 203 of the Act, is bound to act in a reasonable manner expected of from a

statutory power, especially while dealing with a right of an elected representative of a local body. Issuing a notice need not be treated as a mere

ritual or an empty formality. By the impugned order, the first Respondent has taken away a statutory power conferred u/s 188(3) of the Act, which

reads as follows;

Subject to such general control as the village panchayat may exercise from time to time, all cheques for payment from Village Panchayat Fund

shall be signed jointly by the President and Vice-President and in the absence of the President or Vice-president, as the case may be, by the Vice-

president or the President and another member authorized by the Village Panchayat at a meeting in this behalf.

9. A Division Bench of this Court in the case of Pugazhendran President, Brammapuram Village Panchayat, Katpadi Panchayat Union Vs. B.G.

Balu, The District Collector, (Inspector of Panchayats) and The Government of Tamil Nadu, considered the importance of issuing notice and held

that before taking any action against the Vice - President of Village Panchayat either u/s 203 or u/s 206 of the Act, person concerned should be

given a notice, as any adverse order passed either u/s 203 or u/s 206 of the Act will have a civil consequence divesting the statutory powers.

10. The Supreme Court in the case of Asitkumar Kar v. State of West Bengal and Ors. reported in 2009 (1) Supreme 647 and in the case of

Gurmej Singh v. State of Punjab and Anr. reported in 2009 (4) Supreme 808 considered similar issues and held that no adverse orders shall be

passed against a person without giving an opportunity.

11. We are satisfied that in the said notice dated 07.10.2009, no allegation is levelled against the Appellant, and therefore, the consequential order

passed by the first Respondent dated 02.11.2009 cannot be sustained, as the said order is passed in violation of principles of natural justice.

12. Hence, the order of the learned Single Judge dated 24.08.2010 made in W.P. (MD). No. 11475 of 2009 is set aside and the impugned order

passed by the first Respondent on 02.11.2009 is quashed and W.P.(MD). No. 11475 of 2009 is allowed and the matter is remitted back to the

first Respondent, who shall proceed afresh strictly in accordance with the earlier order dated 16.09.2009 made in W.P.(MD). No. 5547 of 2009

and pass fresh orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.

13. The Writ Appeal is allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.