

(2013) 06 MAD CK 0020
In the Madras High Court
Case No : Writ Petition No. 5282 of 2008

Krishnan

APPELLANT

Vs

Government of Tamil Nadu and others

RESPONDENT

Date of Decision : 14-06-2013

Acts Referred:

Citation : (2013) 7 MLJ 707

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Balakrishnan, for the Appellant; R. Vijaya Kumar, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—This writ petition was filed by Krishnan challenging the correctness of the impugned order passed by the Block Development

Officer(Village Panchayat), Mailam Panchayat Union, Villupuram District in Na.Ka.Al/2159/07 dated 15.02.2008, to quash the same with the

further direction to the respondents 2 and 4 to drop further action in recovering the amount from the petitioner.

(i) Mr. K. Balakrishnan, learned counsel for the petitioner submitted that he was the President of Vizhukkam Panchayat union during the period

from 01.04.2006 to 21.10.2006. During his tenure as the President there was no complaint whatsoever from any quarter against him in respect of

discharge of his duties as village President. While so, the District Collector, Villupuram District-the 2nd respondent by proceedings bearing No.

A7/11309/05-02 dated 25.3.2006 has given an administrative sanction for digging a bore-well and fixing a motor therein. That apart,

administrative sanction was also given for fixing a motor in the well dug in the open place of the Vizhukkam Colony by allotting a sum of Rs.

94,000/- to the said Vizhukkam Village under the 12th Finance Commission Subsidy Scheme. The only work required to be done by the

President under the scheme was to call for tenders by passing a resolution in the village Panchayat. The petitioner rightly called for tenders for

allotting the above work and two persons, by name, Selvam and Elumalai had given their tender forms. Since Selvam has quoted lesser price for

completing the work, his tender was accepted. Subsequently, the Block Development Officer, Mailam also in his proceedings dated 12.09.2006

has given instructions to execute the abovesaid work as well. After the completion of the work by the said contractor-Selvam as early as

September 2006, when demand was also made by him for the advance amount of Rs. 75,000/-, the petitioner as the President convened the

village Panchayat on 15.9.2006 and passed an unanimous resolution to give 60% of the amount claimed by the contractor. Only on the basis of the

resolution the petitioner issued a cheque for a sum of Rs. 50,000/- to the contractor Selvam. In the meanwhile, the new Panchayat President sworn

in and therefore, the charge was handed over to the new Panchayat President. After the charge was handed over to the new Panchayat President,

even though a sum of Rs. 50,000/- payable to the Contractor-Selvam was approved by the Deputy Block Development Officer in his proceedings

dated 27.10.2006, that was also rightly audited by the Auditor by Audit, the petitioner received a communication from the 4th respondent-Block

Development Officer, Mailam Panchayat Union, alleging that the petitioner has not obtained prior permission from the fourth respondent to

withdraw the amount of Rs. 50,000/-. Challenging the same, the petitioner has come to this Court.

(ii) It was also the case of the petitioner that when the District Collector under the 12th Finance Commission Subsidy Scheme has allotted a sum of

Rs. 94,000/- to the petitioner's village, namely, Vizhukkam, only after passing the resolution in the village Panchayat on 15.9.2006 deciding to give

60% of the amount claimed by the contractor and when the petitioner has issued a cheque for Rs. 50,000/- in the name of contractor Selvam, it is

improper on the part of the 4th respondent to find fault with the petitioner for having issued a cheque for a sum of Rs. 50,000/- in the name of

Selvam who was a contractor and completed the work also in September 2006.

(iii) It was further argued that when the Deputy Block Development Officer also in his proceedings dated 27.10.2006 has approved the payment

of Rs. 50,000/- for having executed the work of fixing a motor for the bore well, the 4th respondent cannot issue the impugned order.

(iv) Finally, it was submitted that when the account was also audited by the Audit Department, followed by the approval granted by the Deputy

Block Development Officer, no fault can be found against the petitioner. On that basis, the learned counsel prayed for quashing the impugned

order calling upon the petitioner to repay the abovesaid amount of Rs. 50,000/-.

2. (i) A detailed counter affidavit has been filed by the 4th respondent-Block Development Officer, Mailam Panchayat Union taking a stand that

the action of the petitioner in issuing a cheque in the name of the contractor-Selvam was illegal and improper. The reason being, before granting

sanction order he has to get permission from the Block Development Officer as per the Tamil Nadu Panchayat Act 1994. In the present case,

when there was no specific application made by the 4th respondent for sanctioning the amount of Rs. 50,000/- in the name of the contractor-

Selvam, taking a plea that the petitioner has issued a cheque on the basis of the resolution passed in the village panchayat cannot be accepted.

(ii) Again it was averred in the counter affidavit that the petitioner who was the ex-President of the respondent village panchayat, having entrusted

the contract work in favour of Selvam for digging a borewell and fixing a motor therein and also for fixing a motor in the well dug in the open place

of the Vizhukkam colony by tender, has sanctioned a sum of Rs. 50,000/- for the said contract work without getting prior permission from the

Block Development Officer(Village Panchayat). Therefore, the 4th respondent has passed the impugned order dated 15.2.2008 to recover the

said amount of Rs. 50,000/- from the petitioner.

3. (i) But this Court is not able to agree with the reasoning given in the counter affidavit in support of the impugned order. As a matter of fact, the

petitioner was the President of the Vizhukkam Panchayat during the period from 1.4.2006 to 21.10.2006. During the tenure as President, the

District Collector, Villupuram District-the 2nd respondent by his proceedings No. A7/11309/05-02 dated 25.03.2006 has given an administrative

sanction for digging a bore well and fixing a motor therein. That apart, the District Collector has also given an administrative sanction for fixing a

motor in the well dug in the open place of the Vizhukkam colony. After that, he has also allotted Rs. 94,000/- under the 12th Finance Commission

Subsidy Scheme. Under the scheme, the President of the village has to call for the tenders by passing a resolution in the village panchayat. The

petitioner has rightly called for tenders for allotting the abovesaid work. When the two contractors, namely, Selvam and Elumalai have given their

tender forms, accepting the tender given by Selvam who was showing the lesser price for completing the work, the petitioner allotted the work to

Selvam, who has also completed the work as early as September 2006. Thereafter, the contractor-Selvam has demanded the advance of Rs.

75,000/- for the work done. In view of that the petitioner has convened the village Panchayat meeting on 15.9.2006 and a resolution was passed

therein unanimously to pay 60% of the amount claimed by the contractor. In the meanwhile, the new Panchayat President has sworn in and the

aforesaid amount was also shown in the audit and subsequently, the same was approved by the Deputy Block Development Officer in his

proceedings dated 27.10.2006. A close perusal of the proceedings dated 27.10.2006 shows that the amount of Rs. 50,000/- was rightly audited

and approved by the Deputy Block Development Officer. Therefore, when the amount of Rs. 94,000/- was allotted by the 2nd respondent and

the same was also approved by the Deputy Block Development Officer in his proceedings dated 27.10.2006, this Court further looking at the

resolution passed on 15.9.2006 to pay 60% of the amount to the contractor, does not find any reason to uphold the impugned order calling upon

the petitioner to return the money on the ground that he has failed to get prior approval from the 4th respondent. When the District Collector,

Vizhukkam village has allotted the amount of Rs. 94,000/- under the 12th Finance Commission Subsidy Scheme and the same was also approved

by the Deputy Block Development Officer, the question of again obtaining one another prior approval from the 4th respondent does not arise.

(ii) Secondly, Section 188(3) of the Tamil Nadu Panchayats Act 1994 also says "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 authorised by the

Village Panchayat at a meeting in this behalf." Therefore, when Section 188(3) authorises the Village Panchayat to sign any cheque for payment

from Village Panchayat Fund, in the present case, the President/petitioner who was serving as the President of the Village during the relevant

period has issued the cheque only after the passing of the unanimous resolution in the Village Panchayat on 15.9.2006 authorising to pay 60% of

the claim by the contractor. Therefore, this court finding more merits in the writ petition, by setting aside the impugned order, allows the writ

petition.

Accordingly, W.P. No. 5282/2008 is allowed. No order as to costs.