
(2009) 12 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No. 12610 of 2009 and M.P. No's. 1 and 2 of 2009

M. Egavalli Mahalingam

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 2, 205, 205(11), 205(12), 205(2)

Citation : (2009) 12 MAD CK 0065

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.V. Ayyathurai, for M. Velmurugan, for the Appellant; R. Neelakantan, GA for RR1 and 2 and J. Rajakalifulla for R3, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard Mr. M.V. Ayyathurai, learned Counsel leading for Mr. M. Velmurugan, learned Counsel appearing for the

petitioner and Mr. R. Neelakantan, learned Government Advocate appearing for respondents 1 and 2 and Mr. J. Rajakalifulla, learned Counsel

appearing for third respondent and perused the records.

2. The petitioner has filed the present writ petition seeking to challenge the order of the Government in G.O.(D)No.294, Rural Development and

Panchayat Raj Department, dated 25.5.2009 passed by the first respondent, confirming the order of the second respondent, the District Collector,

Tiruvallur District, dated 16.9.2008 and published in the Tamil Nadu Government Gazette in Part IV Section 2 dated 3.9.2008 (pages 496 and

497), in ordering removal of the petitioner from the post of the President of Kummanur Village Panchayat u/s 205(11) of the Tamil Nadu

Panchayat Act.

3. The reason found in the order was that the petitioner was responsible for cutting green trees found in poramboke lands without following the procedure found in G.O. Ms. No. 277, Rural Development Department, dated 22.11.2001 and arbitrarily allowed to auction it. She had misused the power of a Panchayat President and caused loss to the panchayat. After considering the charges, her explanation and views given by the Panchayat members, the Collector, who is also the Inspector of Panchayats having been satisfied that removal of petitioner is the only option had issued the said notification.

4. The petitioner by a resolution, dated 4.12.2006 passed by the Panchayat, conducted an auction on 18.2.2007 auctioning ""Velikathan"" trees belonging to the Panchayat. It is seen that an intimation was also given to the third respondent by the petitioner. Subsequently, it transpires that certain complaints were received regarding the method of disposing of those trees. Therefore, the second respondent issued a show cause notice, dated 4.12.2007 asking as to why action should not be initiated against her u/s 205 of the Tamil Nadu Panchayat Act. The petitioner gave a reply on 13.12.2007 denying the charges. It was also claimed that she was an illiterate woman and she was following the earlier practice. However, the District Collector by his order, dated 16.9.2008 ordered for removal of the petitioner from the post of Panchayat President of Kummanur Panchayat with effect from 3.9.2008. A copy of the said order was communicated to the petitioner with a covering letter, dated 16.09.2008.

5. The petitioner challenged the same by way of writ proceedings in W.P. No. 23098 of 2008 before this Court. Pending the writ petition, this Court granted an interim stay on 20.10.2008 and ordered notice of motion. On behalf of the second respondent Collector, a counter affidavit dated (nil) was filed regarding the method adopted for removing the petitioner from her post. In paragraphs 7 and 8, it was observed as follows:

7. It is submitted that the 2nd respondent having not satisfied with the reply submitted by the petitioner had forwarded the show cause notice and the reply submitted by the petitioner to the Tahsildar, Ponneri to take further action in accordance with Section 205(2) of the Tamil Nadu Panchayat Act. Accordingly, the Tahsildar, Ponneri had convened a meeting on 23.07.2008 to ascertain the views of the Ward members about

the removal of the petitioner from the post of President. The Tahsildar, Ponneri recorded the Minutes of meeting of the Ward members on

23.07.2008 and forwarded the same to the 2nd respondent. In the meeting 3 Ward members have accorded their consent for removal and 3

Ward members have opposed.

8. It is submitted that the 2nd respondent on considering the show cause notice, reply submitted by the petitioner and the Minutes of the meeting

had removed the petitioner from the post of Panchayat President on 19.08.2008 to take effect from the date of publication in the Official Gazette

and the same was published in the Official Gazette 03.09.2008, which is challenged in the Writ Petition.

6. However, when the matter came up for final hearing, on 22.12.2008, this Court directed the petitioner to avail the remedy provided u/s 205(12)

of the Tamil Nadu Panchayat Act within eight weeks. Since an interim order was granted in her favour, this Court directed the continuance of that

order until the disposal of the appeal.

7. The petitioner filed a revision petition dated 19.1.2009 before the first respondent State. In paragraphs 7 and 8, it was averred as follows:

7. I submit that all the ward members have attended the meeting held by the Tahsildar on 23.7.2008 for the Agenda of removing the Panchayat

President. I submit that the majority of members opposed the Agenda for dismissal of the Panchayat President and the same was forwarded to the

1st respondent for necessary consideration.

8. I submit that while the matter thus stood, to great shock and surprise on 18.9.2008, I received a communication from the 1st respondent dated

16.9.2008 vide proceeding No. Na.Ka.Yen.1760/07/A3/Vu.E(Voo) along with Gazette Notification, according to which I was removed from

Panchayat President of Kummonnor vide Proceeding dated 19.8.2008 with effect from 3.9.2008. However, the proceeding dated 19.8.2008 of

my removal from the post of President was never communicated to me and I was not given an opportunity on the proposed grave punishment. I

submit that the 1st respondent without considering the explanation and the majority decision have blindly come to the conclusion about the charges

and in a pre-determined manner passed the order of removal from the post of President. Further, the impugned order of removal shows that

vindictive nature of the 1st respondent which was passed in a mechanical manner without application of mind....

8. The first respondent State upon receipt of the said revision petition, called for the file from the District Collector and considered the same along

with the contentions raised by the petitioner. The first respondent rejected the case of the petitioner, by a final order in G.O.(D) No. 294, Rural

Development and Panchayat Raj Department, dated 25.5.2009 and confirmed the order of the second respondent.

9. It was also stated that the notification will come into force on the date of its publication in the Government Gazette. The petitioner thereafter

approached this Court with the present writ petition. This Court ordered notice to the respondents. Pending the writ petition, this Court by an

order, dated 13.7.2009 granted an interim stay for a limited period. The said interim order came to be continued from time to time. The petitioner

by virtue of the interim order is continuing in the said post.

10. Apart from the various grounds raised in the affidavit filed in support of the writ petition, in paragraph 12(C), it was averred as follows:

12(C). However, the Tahsildar appeared to have submitted a report to the District Collector stating that out of 6 Ward Members 3 Ward

Members alone objected for the removal of the Petitioner as is evident from the averments made in the counter affidavit filed in the earlier writ

petition in W.P. No. 23098/2008. The Tahsildar has not taken the vote of the President who had objected for removal and also forming part of

the Panchayat Council. Had the vote casted by the President is taken into consideration, there shall be a majority of voting for opposing to remove

the Petitioner. But the Tahsildar has failed to do so for the reasons best known to him...

11. On getting the notice from this Court, the second respondent had filed a counter affidavit, dated 24.8.2009 and the third respondent has filed a counter affidavit, dated 25.9.2009.

12. In the counter affidavit filed by the respondent, in answer to the allegation regarding voting, it was stated that there is no casting of vote for the

President u/s 205. It is not as if the majority view of the members will prevail over his decision. The Tahsildar has followed the correct procedure.

With reference to the allegation about not giving show cause notice after

ascertaining the views of the members of the panchayat, the counter

affidavit filed by the second respondent is totally silent. In paragraph 19(C) of the counter, the second respondent has stated as follows:

19(C). ...The views of the members and petitioners explanation have been considered by the Collector and he has removed the President, on the

basis of evidences adduced, enquiry report, proven violation of the rules and serious irregularities committed by the petitioner....

...

...The charges have been properly framed in this show cause notice, petitioner has replied to this notice and panchayat meeting conducted by

Tahsildar was as a consequence of the show cause notice dated 29.12.07 only. Hence there are no procedural irregularities in the matter. The first

respondent has relied on evidences brought on record, opportunity to the revision petitioner was provided to present her case and consider her

explanation...

13. In the counter affidavit filed by the third respondent, in paragraphs 7,8 and 14, it was averred as follows:

7. ...The Tahsildar, Ponneri recorded the minutes of meeting held on 23.07.2008 and forwarded the same to the 2nd respondent. In the meeting 3

ward members had accorded their consent for removal and 3 ward members had opposed.

8. It is submitted that the 2nd respondent, on considering the show cause notice, reply submitted by the petitioner and minutes of the meeting had

removed the petitioner from the post of Panchayat President on 19.08.2008 to take effect from the date of publication in the Government Gazette

and the same was published in Govt. Gazette dated 03.09.2008....

...

14. ...the procedures followed by the respondent is correct as contemplated by law u/s /205(11). The Inspector may in his discretion, either

remove the president from office by notification, or drop further action. Three members have opined to remove the president and three members

have opined continuation of president. Hence the views of the panchayat are in balance. Further the Collector had removed the petitioner

exercising his discretion as per Tamilnadu Panchayat Act 205(11)....

14. While the petitioner's contention was that she had followed the earlier procedure followed by the Panchayat, the contention of the respondents was that she had failed to follow the relevant rule in cutting the trees. In any event, the authorities are bound to consider her removal strictly in accordance with the provisions of Section 205.

15. Mr. M.V. Ayyathurai, learned Counsel for the petitioner placed reliance upon the judgment of this Court in *J. Maria Selvam v. Government of Tamil Nadu and Anr.* reported in 2006 (3) MLJ 537. In that case, a learned Judge of this Court in paragraph 30 observed as follows:

30. ...It is true that the bare reading of Section 205(11) would show that in normal circumstance the question of giving an opportunity, hearing the party, before passing an order would not have been contemplated by law makers. But in the circumstance like this wherein 11 members out of 13 have decided not to take action against the President and one member alone has decided for taking action, it is almost the absolute majority and views of the village Panchayat and when the Inspector while considering the views decides not to accept the views of the Panchayat, is the situation which would not have been contemplated by law makers, the situation is totally different.

16. The learned Counsel also placed reliance upon the judgment of this Court in *S. Udayakumar v. The District Collector-cum-Inspector of Panchayats, Tuticorin District and Ors.* reported in 2009 W L.R. 538. In that case, in paragraphs 16 and 17, another learned Judge had observed as follows:

16. The members of the village panchayat would be in a better position to offer more remarks about the conduct of the President. The charges levelled against the President were all in relation to the conduct of the Panchayat. Therefore, everything would be within the knowledge of the members of the village panchayat. They would be in a better position to comment upon the charges framed against the President. Therefore, when the panchayat members expressed their opinion in one way or the other, the Collector has to consider their views seriously. Though there is no provision to the effect that in case the Collector disagrees with the views expressed by the village panchayat and proceed either to remove the President or to drop further auction, the Collector is bound to express his opinion

at least in the file as to why he disagrees with the views tendered

by the village panchayat. If it was permissible for the Collector to take action without reference to the opinion tendered by the village panchayat,

there was no requirement in the provision to consider the views of the village panchayat.

17. In case the Collector disagrees with the views expressed by the Panchayat Council and proceed further, the Collector has to hear the

President. The Collector was required to give notice to the President and he should be heard before taking such a drastic action like removal from

office. Even though there is no provision to give such notice, principles of natural justice should be read into the statute. The proceedings against an

elected member cannot be taken so lightly. Therefore, principles of natural justice should be strictly followed in such cases.

17. In the first judgment cited on behalf of the petitioner, the learned Judge was of the opinion that the views of the panchayat members if it is

majority in favour of the person (who was sought to be removed from his post) and if the District Collector decides not to accept their views, then

such a situation is an abnormal circumstance and it requires hearing of the aggrieved party. In essence if majority is for exonerating the aggrieved

person from the allegations, then the question of opportunity will arise.

18. In the second case, the learned Judge has taken a view that even though there is no provision for giving notice before final action, principles of

natural justice has to be read into statute and it should be followed strictly.

19. However, to the rescue of the petitioner, a Full Bench of this Court presided by S.K. Mukhopadhyaya, J. vide judgment in *The District*

Collector and Inspector of District Panahcyat v. Devi Parasuraman reported in 2009 (4) CTC 609 had laid down certain parameters for the

exercise of power u/s 205 by the District Collector. After referring to various other decisions, in paragraphs 15 and 17, the Full Bench opined as

follows:

15. An order passed by a Statutory Authority if visited with Civil or evil consequences must meet the test of reasonableness. If it prejudicially

affects the subject, for example, the President in the present case, then the authority should give reasons. In the case of *The Consumer Action*

Group and Another Vs. State of Tamil Nadu and Others, , the Supreme Court held

that application of mind of an authority at a particular point of time could only be revealed when the order records its reasons. Therefore, u/s 205, if the Inspector being satisfied with the explanation drops the proceeding, he should record it in the proceeding. In case of unsatisfactory explanation or non-explanation, the Inspector cannot take a decision of his own, but required to forward the matter to the Tahsildar for the decision of the Village Panchayat. It is the Village Panchayat, which records reasons in its minutes of the meeting. Normally the Inspector has to act on such decision. In such case, reason being on record, for acceptance of such report no further reason required to be recorded by the Inspector. However, in case the Inspector differs with the decision of the Village Panchayat, to test the reasonableness of such decision, the Inspector is not only supposed to record the reason, but also required to follow the Rules of Natural Justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion.

...

17. In the light of the discussions made above, we summarise our views as follows:

- (i) An act of the Inspector u/s 205 is quasi-judicial in nature;
- (ii) If the Inspector is satisfied with the explanation submitted by the President u/s 205, he is required to record his satisfaction for dropping the proceeding; and
- (iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President.

20. Therefore, without going into the merits of the charges against the petitioner, the case of the petitioner will have to be seen in the light of the law

laid down by the Full Bench. If that dictum is applied, then whether out of six members, three were in favour of petitioner or three were against her

or whether she is also entitled to vote so that it becomes a majority view of the

Panchayat council will pale into insignificance. If paragraph 17.3 of the Full Bench is applied, certainly, the second respondent was not given an opportunity.

21. In the earlier counter affidavit filed by second respondent in W.P. No. 23098 of 2008 as well as the counter affidavit of third respondent in this case, it was stated that three members have accorded their consent for removal and three members have opposed the same. If that is so, the order passed by the second respondent does not stand to scrutiny by Law. When he stated that he went by the opinion of the panchayat and when the opinion was equally divided, then he has to record his own reasons and not put the burden on the panchayat members. Except for the last paragraph, the second respondent has not applied his mind and did not give relevant consideration. Therefore, as found in paragraph 17.3 in the Full Bench judgment, if either he disagrees with the views expressed by the panchayat members and decides to remove the office holder or if he wants to drop the proceedings against the office holder, he is not only required to record reasons for differing from the views of the village panchayats, but before taking any decision to remove from the office of the President, he has to provide further notice to the office holder intimating reasons for his difference. He can issue a notification only on considering the cause if any shown by the office holder. The impugned order passed by the second respondent, dated 3.9.2008 though was confirmed by the order of the first respondent, dated 25.5.2009, certainly is not in accordance with the dictum laid down by the Full Bench.

22. It must also be stated that in the revision memo filed before the first respondent, the petitioner had raised the issue of not giving an opportunity before imposing punishment in paragraphs 7 and 8. But that has not been answered in the revisional order passed by the first respondent State. On the contrary, the counter affidavit filed by the third respondent in this writ petition, the stand taken by him was that the views of the panchayat members are in balance. Therefore, the District Collector had exercised his power. There is nothing on record to show that he has exercised his power in a manner set out by the Full Bench.

23. This Court is not remitting the matter back to the first respondent. Remitting back the matter to the revisional authority will not cure the defect

pointed by this Court and that prejudice has been pleaded as a specific ground in the memorandum of revision filed by the petitioner even in the earlier round of litigation. Since the legal provisions were not adhered to by the second respondent, the matter is remitted back to the second respondent.

24. In the light of the above, the impugned orders will stand set aside. The writ petition will stand allowed. The matter is remitted back to the second respondent to dispose of the proceedings in accordance with the dictum of the Full Bench referred to above. No costs. Consequently, connected miscellaneous petitions will stand closed.