

(1990) 02 MAD CK 0056
In the Madras High Court
Case No : Writ Petition 14341 of 1989

M. Govindan

APPELLANT

Vs

The District Collector, Pudukottai and The Executive Officer,
Arimalam Town Panchayat

RESPONDENT

Date of Decision : 28-02-1990

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 28(1)

Citation : (1990) 02 MAD CK 0056

Hon'ble Judges : Bhakthavatsalam, J

Bench : Single Bench

Advocate : K. Sukumaran, for the Appellant; P. Arivudai Nambi, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bhakthavatsalam, J.—When the miscellaneous petitions came up for hearing with the consent of both parties the main writ petition itself has been taken up for final disposal. The petitioner challenges the orders of the second respondent removing him from the membership of the Town Panchayat. The petitioner is a member of the Town Panchayat in Ward 3. By the impugned order he has been removed from the membership. The order is purported to have been made under S.26(d) of the Town Panchayats Act 1958.

2. The petitioner alleges in the affidavit that the order has been arbitrarily made without following the proceedings as laid down by the Town Panchayats Act, 1958. It is further alleged that S.28(1) of the Act does not confer power on the second respondent to remove the petitioner from the membership of the Town Panchayat. The further allegation made is that the impugned order has been passed without jurisdiction which is not vested with the second respondent. It is stated that if there is a dispute as to whether the petitioner has become disqualified or not, the only procedure to be followed for removing the petitioner is under S.28 of the Act by applying to the prescribed judicial authority.

3. Counter affidavits were filed on behalf of the respondents. So far as the counter affidavits are concerned the events which resulted in the removal of the petitioner are narrated. It is stated in the counter affidavit of the second respondent that there is an effective alternative remedy available under S.28(2) of the Act and the petitioner has rushed to this court without exhausting that remedy and on this ground the writ petition has to be dismissed. It is stated in the counter affidavit of the first respondent that he has come to the conclusion only on the basis of the enquiry report submitted by the Revenue Divisional Officer. It is further stated that the writ petitioner has to be disqualified under S.28(1) of the Act, for the work being done by him and thereby acquiring interest. It is stated that once the authorities have come to a conclusion that the petitioner has acquired the interest for the work being done to the Panchayat, the first respondent has got every right to give direction to his authorities and accordingly it is open to the second respondent to give effect to the order of the first respondent in the interest of the public at large. It is also stated that the order of the second respondent is well within the jurisdiction.

4. Learned counsel for the petitioner reiterates the contentions made in the affidavit and submits that under S.28 of the Act, the executive authority has to give notice to the petitioner stating all the allegations and place the matter on the next meeting. Learned counsel states that that was not done. Only if it is done, then the petitioner can approach the judicial authority prescribed under S.28(2) of the Act. Learned counsel further stated that no notice was given to the petitioner and also the provisions of the act had not been complied with strictly. Learned government advocate stated that the petitioner has committed certain irregularities. He is not able to say whether S.28 of the Act has been complied with. Learned government advocate states that the order has not been happily worded. Considering the argument of both sides I think the contention of the learned counsel for the petitioner is well founded. S.28(1) of the act reads as follows--

Authority to decide questions of disqualification of members--(1) Whenever it is alleged that any person who has been elected as a member of Panchayat or who becomes a member of a panchayat union Council is not qualified or has become disqualified under Ss.2224, 25, 26, 27A, the executive authority or the Commissioners as the case may be, shall, by notice in writing, inform such member of the allegation and place the matter at the next meeting of the Panchayat or Panchayat Union Council, it before the date of expiry of two months from the date of receipt of such notice such member does not apply to the prescribed judicial authority under sub-S.(2) they shall become not qualified or disqualified from such date of expiry of the said two months.

Eventhough a member is disqualified especially in this case under S.26(d) of the Act in my view, the executive authority has to give a notice in writing and inform the member of the allegation. Then, he has to place the matter on the next meeting of the Panchayat. Admittedly, this has not been done. A look at the

order itself shows that the order has been passed on a report. This, in my view, is in violation of principle of natural justice, as well as in violation of the provisions of the Tamil Nadu Panchayats Act, 1958. The judicial authority has been prescribed under S.28(2) of the Act to decide whether such allegation is right or not and that decision has to be final. To approach the judicial authority S.28(1) of the Act has to be complied with. In this case it has not been done. On this simple ground that the second respondent has not complied with the provisions of S.28(2) of the Act, the impugned order is set aside. The writ petition stands allowed. There will be no order as to costs.