
(2015) 08 MAD CK 0137

In the Madras High Court

Case No : Writ Petition (MD). No. 955 of 2015 and M.P. MD. Nos. 1 & 3 of 2015

Mariyappan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0137

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : K. Samidurai for K. Sridhar Associates, for the Appellant; M. Rajarajan, Govt. Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J—This writ petition has been filed by the petitioner praying issuance of a writ of Certiorari to call records relating to the impugned order bearing No.Cep5/2198/2012 dated 19/01/2015 passed by the 2nd respondent, the consequential Government Gazette Notification bearing No. 19 dated 20.01.2015, to quash the same.

2. The brief facts of the case, which are necessary to dispose of this writ petition, in brief, are as follows:-

2(1) The petitioner viz. Mariyappan contested post of President of Manthithoppu Village Panchayat, Kovilpatti Taluk, his supporters contested post of Ward Members of the said panchayat, as a group, in the last local body election held in the year 2011. Against the petitioner, one Mani contested post of President, his supporters contested post of Ward Members. In the said election, the petitioner Mariyappan was elected as President of the said panchayat, only two of his supporters were elected as Ward Members. Though the said Mani was defeated in the election, when he had contested post of President, seven persons from his group were elected as Ward Members, one among them was elected as Vice-

President. Panchayat Clerks are also supporters of the said Mani, opposite party of the petitioner herein.

2(2) The Vice-President, all the Ward Members, except two Ward Members, who belong to the said Mariappan's group, joined together, they did not cooperate peaceful functioning of the panchayat. Further, they made a complaint before the 2nd respondent levelling certain allegations against the petitioner herein. Based on the said complaint, the 2nd respondent had issued a show cause notice dated 31.11.2012 under Section 2051a of Tamil Nadu Panchayat Act, as if the petitioner had not followed the Government orders, Panchayat Rules, while exercising his power, thereby, the petitioner caused loss to the Panchayat to the tune of Rs. 7,75,239/-. To the said show cause notice, the petitioner has submitted his explanation on 11.01.2013. But, not being satisfied with the explanation submitted by the petitioner, the 2nd respondent had directed the 4th respondent by his order dated 12.02.2013 to ascertain the views of the members of the Panchayat on the notice issued under Section 2051a of the Act. On that basis, the 4th respondent had issued a notice dated 21.02.2013. According to the petitioner, the notice dated 21.02.2013 was issued by the 4th respondent without following the provisions of the law; hence, the petitioner had filed a writ petition, obtained an order of stay. Thereafter, the 4th respondent had issued another notice dated 15.03.2013 by informing that the meeting is adjourned to 27.03.2013. Thereafter, again the 4th respondent had issued a notice dated 21.03.2013 by informing that the meeting scheduled to be held on 27.03.2013 is adjourned without informing any date. Thereafter, the 4th respondent had issued a notice dated 14.05.2013 by informing that the meeting of panchayat would be held on 29.05.2013, but on the said date also the meeting was not convened due to pendency of the writ petitions filed by the petitioner.

2(3) Earlier, the petitioner had filed five writ petitions in W.P. (MD).No.10257/2012 and W.P.(MD).Nos.3399, 4141, 8560 & 5689 of 2013 and all the said five writ petitions were dismissed by this Court by common order dated 06.06.2014. Aggrieved over the same, the petitioner has filed Writ Appeals and the same are pending before the Division Bench of this Court.

2(4) While so, subsequent to the dismissal of the said five writ petitions filed by the petitioner, the 4th respondent had issued a notice dated 07.07.2014 and convened the meeting of panchayat ward members on 17.07.2014 and two members had voted in favour of the petitioner and other seven members voted against the petitioner, by supporting the issue brought before them. Thereafter, the 2nd respondent had issued a show cause notice dated 28.07.2014 under Section 205(11) to the petitioner and on 28.08.2014 the petitioner has also submitted his explanation to the said show cause notice dated 28.07.2014. Thereafter, personal enquiry was conducted on 15.09.2014 and in the personal enquiry, the petitioner appeared and submitted his explanation stating that against the dismissal of the writ petitions, he has filed writ appeals in W.A. Nos. 902 to 906 of 2014 and the same are pending. But, the 2nd respondent, after

considering all those things, has passed the impugned order dated 19.01.2015, removing the petitioner from the post of President of Panchayat under Section 205(11) of the Act and the same was also published in Tamil Nadu Government Gazette No. 19 dated 20.01.2015. Hence, the petitioner has filed the present writ petition for the relief as stated supra.

3. This Court by order dated 28.01.2015 in M.P. No. 1 of 2015 in W.P.(MD).No. 955 of 2015 has granted an order of interim stay. On appearance, the Official Respondents 2 to 4 have filed a petition in M.P. (MD).No. 3 of 2015 seeking to vacate the said interim stay.

4. The learned counsel appearing for the petitioner, by inviting the attention of this Court to the notice dated 07.07.2014 issued by the 4th respondent under Section 205(3) of the Tamil Nadu Panchayats Act, to convene the meeting of all the ward members with regard to the proposal for removal of the petitioner herein from the post of President of the village panchayat, submitted that along with the said notice dated 07.07.2014, no copies of the documents such as show cause notice issued under Section 205(1), explanation of the petitioner to the said show cause notice, proposal for removing the petitioner from the post of President of the Panchayat and other connected documents were furnished to the petitioner. The 4th respondent has simply served a notice without furnishing connected documents. Therefore, the very notice issued by the 4th respondent for convening the meeting of the Ward Members itself is bad in law. In support of his contention, the learned counsel for the petitioner relied upon the unreported judgment of this Court delivered in W.P. No. 10676 of 2010 (V.Kanagavalli Viswanathan Vs The Chief Secretary to Government and five others) dated 20.07.2010, wherein a learned Single Judge of this Court has held that the conducted papers should be furnished to the members of the village panchayat along with the notice for convening the meeting of the panchayat with regard to the proposal for removing the President from the office and if no such documents are furnished, then it is only an empty formality.

5. As the next fold of submission, the learned counsel appearing for the petitioner submitted that in the notice dated 07.07.2014 issued by the 4th respondent, no where it is mentioned that the said notice was issued for convening the meeting of the members of the Panchayat for the proposal of removing the petitioner from the post of President of the village panchayat and also about the abuse of power by the petitioner and loss caused to the Panchayat by the petitioner. Therefore, on that ground also, the notice dated 07.07.2014 would not be legally sustainable.

6. It is yet another submission of the learned counsel appearing for the petitioner that in the impugned order passed by the 2nd respondent, he has considered the report filed by the 3rd respondent dated 01.03.2013 and the said report formed a basis for the 2nd respondent to pass the impugned order. But, the copy of the said report was not furnished to the petitioner, while seeking for explanation from the petitioner. Therefore, on that ground also, the impugned order is liable

to be quashed. In support of his contention, the learned counsel for the petitioner relied upon the judgment of this Court reported in (2006) 3 M.L.J., 537 [J.Maria Selvam Vs Government of Tamil Nadu], wherein it has been held that if a report appears to be a basis for passing of the impugned order, the same should be furnished to the petitioner. Thus, the learned counsel appearing for the petitioner sought for quashing of the impugned order.

7. The learned Government Advocate appearing for the respondents 1 to 4 submitted that the petitioner was already removed from the post of village panchayat and the same was also published in the Government Gazette No. 19 dated 20.01.2015. In fact, all the issues raised by the petitioner in this writ petition were already considered by this Court in earlier occasion in the writ petitions viz., W.P.(MD).No. 10257/2012 and W.P.(MD).Nos. 3399, 4141, 8560 & 5689 of 2013, which were filed by the petitioner herein, and the claim of the petitioner was dismissed by this Court by order dated 06.06.2014. Since the matter has reached the finality, now if the petitioner is having any grievance against the impugned order, he has to approach the Government under Section 205(12) of the Act. In support of his contentions, the learned Government Advocate relied upon the judgment of this Court reported The District Collector cum Inspector of Panchayat, The Assistant Director (Panchayats) and The Tahsildar Vs. S. Senthamizh Selvi and The Block Development Officer (Village Panchayats), (2009) 1 CTC 356 .

8. The learned counsel appearing for the 5th respondent has also submitted that the issues raised by the petitioner were already considered by this Court in the earlier writ petitions filed by the petitioner herein and the claim of the petitioner was negated by this Court. Thus, he sought for dismissal of the writ petition.

9. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

10. Now, the 2nd respondent has passed the final order (impugned order) under Section 205(11) of the Act and the same was also published in the Government Gazette. Even according to the petitioner, he had participated in the personal enquiry and submitted his explanation to the show cause notice. After the dismissal of the earlier writ petitions filed by the petitioner herein, the impugned order has been passed by the 2nd respondent, after convening the meeting of the ward members of the panchayat. Now, the matter has attained finality. At this juncture, the petitioner cannot go back and question the notice issued by the 4th respondent dated 07.07.2014 to convene the meeting of all the ward members of the panchayat with regard to the proposal for removing the petitioner from the post of President of the village panchayat. As contended by the learned Government Advocate, if the petitioner is aggrieved by the impugned order passed by the 2nd respondent, he has to approach the Government under Section 205(12) of the Act. In this regard, a reference could be made in the judgment of this Court reported in The District Collector cum Inspector of Panchayat, The Assistant Director (Panchayats) and The Tahsildar Vs. S.

Senthamizh Selvi and The Block Development Officer (Village Panchayats), (2009) 1 CTC 356 , wherein it has been held as follows:-

"6. However, against the order which has been passed by the Inspector, the person aggrieved has the right to approach the Government under Section 205(12) of the said Act. The said provision is extracted hereinbelow:

"(12) The Government shall have power to cancel any notification issued under sub-section (11) and may, pending a decision on such cancellation, postpone the date specified in such notification."

The said provision has not been exhausted before filing the writ petition. We, therefore, give liberty to the writ petitioner, the first respondent herein, to exhaust the said remedy, if she is so advised, within a fortnight from today....."

The dictum laid down the above said judgment is squarely applicable to the present facts of the case. The present writ petition, challenging the order of removal of the petitioner from the post of President of the village panchayat passed by the 2nd respondent under Section 205(11) of the Act, is not maintainable before this Court.

For the foregoing reasons, the writ petition is liable to be dismissed and accordingly, the same is dismissed and the interim stay already granted by this Court is vacated. No costs. Consequently, connected Miscellaneous Petitions are closed.