(2010) 07 MAD CK 0177

In the Madras High Court

Case No : Writ Petition No. 13291 of 2008, M.P. No''s. 1 of 2008 and 1 of 2009

Mr. Sugunapri APPELLANT

Vs

The District Collector (Inspector of Panchayats) and The Assistant Director of Panchayats RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:
Tamil Nadu Panchayats Act, 1994 — Section 199(1), 2(16), 2(5), 205, 205(1)

Citation : (2010) 07 MAD CK 0177

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : V. Suthakar, for the Appellant; S. Ramasamy, Addl. AG. assisted by V. Srikanth, AGP for RR1-2, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—By consent, the main writ petition itself is taken up for disposal.

2. The prayer in the writ petition is for issuance of a writ of Certiorari to quash the notice issued by the second respondent dated 05.05.2008.

3. The petitioner is the elected President of Karunguzhi Panchayat in the election conducted during October 2006. The petitioner has challenged the notice dated 05.05.2008, which has been issued u/s 205(1)(a) of the Tamil Nadu Panchayat Act, 1994 (herein after referred to "as the Act"), calling upon the petitioner to show cause as to why action should not be taken on the allegations contained therein.

4. The validity of the impugned notice is assailed on the ground that the second respondent does not have jurisdiction to issue the notice as he is not the Inspector of Panchayat and therefore, notice is liable to be setaside. It is further contended that the suo-moto power u/s 205(1)(a) of the Tamil Nadu Panchayat Act, has been invoked inspite of, a compliant given by the Vice-President.

Further, it is contended that the impugned notice is only a proceedings of the second respondent and even assuming that the second respondent has been made as a District Collector (incharge), unless he has been specifically appointed as an Inspector of Panchayat, the second respondent would have no Jurisdiction to issue the impugned show cause notice. The learned Counsel appearing for the petitioner would rely on the definition of the term Collector as defined u/s 2(5) of the Act and the definition of the term Inspector as defined u/s 2(16) of the Act and submit that the second respondent is not a Collector or Inspector in terms of the definitions and therefore the impugned notice is without jurisdiction. The learned Counsel for the petitioner placed reliance on the Full Bench decision of this Court in A. Savariar v. The Secretary, TNPSC, Chennai and Anr. 2008 (4) CTC 753 in support of his contention.

5. Per contra, the learned Additional Advocate General would contend that the impugned notice was issued by the Inspector of Panchayat from the office of the second respondent. The authority, who issued the notice was appointed by the Government in G.O. Rt. No. 1534, dated 15.04.2003, as Collector incharge and by virtue of such order, the officer held full additional charge of the post of Collector, Cuddalore District during the period on which the regular Collector was on leave. Therefore, it is submitted that the impugned notice does not suffer from any infirmity. The learned Additional Advocate General would further submitted that the decision of the Hon''ble Full Bench of this Court in A. Savariar v. The Secretary, TNPSC, Chennai and Anr. 2008 (4) CTC 753, fully supports, the stand of the respondents and that the writ petition is devoid of merits.

6. I have carefully considered the submissions on either side and perused the materials available on record.

7. The short question, which arise for consideration of the present writ petition is as to whether the signatory in the impugned notice was empowered to issue the notice u/s 205(1)(a) of the Act. The Section 205 of the Act deals with removal of the President of the Panchayat and states that the Inspector of Panchayats, as defined u/s 2(16) of the Act, either on his own motion or on a representation in writing signed by not less than 2/3rds of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat, is satisfied that the President willfully omits or refuses to carry out the duties or abuses of any his powers, the Inspector shall issue a notice calling upon the President to offer his explanation within the specified date. u/s 2(5) of the Act Collector has been defined to mean the Collector of the Revenue District. Section 2(16) defines, Inspector to mean an officer not below the rank of a Collector appointed by the Government to exercise or perform any of the powers or duties of the Inspector under the Act.

8. The contention of the learned Counsel appearing for the petitioner is that a Collector of Revenue District is not automatically conferred the powers of Inspector of the Panchayats, but should be appointed by the Government to

exercise and perform such duties and the power to appoint such officer is given u/s 199(1) of the Act. No doubt, the impugned notice has been issued from the office of the Assistant Director (Panchayat), Cuddalore. In the penultimate, portion of the order below the signature of the officer, it has been mentioned as Inspector of Panchayat cum District Collector (Incharge), Cuddalore. Therefore, the test would be as to whether the signatory to the notice was empowered to act as the Inspector of Panchayat cum District Collector (Incharge). In this regard, if the Government order in G.O. Rt. No. 1534 is perused, it is seen that the regular Collector of Cuddalore District proceeded on leave and the Government directed the District Revenue Officer (the signatory to the impugned notice) to hold full additional charge of the post of Collector, Cuddalore District, during the absence of the regular Collector. Therefore, the signatory to the impugned notice was empowered by the Government to exercise all powers as that of the District Collector of Cuddalore District. The Hon''ble Full Bench of this Court in the case of a A. Savariar referred above interpreted the word "incharge" and held as follows:

7. Under such circumstances, unless contrary intention is expressed by the Government either by way of a statutory provision or by way of an executive instruction, a Government servant who holds the post as in-charge has got power/to discharge the statutory functions and responsibilities of the said post.

8. Besides since already this issue has been covered by the judgment of the Honourable Apex Court report in Gopalji Khanna Vs. Allahabad Bank and others, as referred above, we are of the opinion, the view of the Division reported in C. Baskaran v. The District Collector, Trichy 1997 WL.R. 33 rendered in W.A. No. 1054 of 1983 is not a correct law. Consequently, we hold that an officer-in-charge of a post has got power to discharge the powers and statutory functions of the said post.

9. Consequently, as far as the point of reference is concerned, we hold that the Officer who is holding the post in-charge has got power to discharge the powers and statutory functions of the said post.

9. Thus, an officer, who is holding the post incharge has got full powers and could exercise all statutory function attached to the said post, unless, he has been specifically prohibited under the relevant Government order or if there is a statutory prohibition. As already seen that the officer concerned has been given full additional charge of the post of Collector of Cuddalore District, therefore, it cannot be stated that the impugned notice is without jurisdiction.

10. In view of the above reasons, there are no merits in the writ petition and accordingly, the same is dismissed. The petitioner is at liberty to submit his explanation to the impugned notice within a period of 15 days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

