
(2000) 03 MAD CK 0102

In the Madras High Court

Case No : Writ Petition No. 5325 of 2000 and W.M.P. No. 3049 of 2000

N. Jayaraman

APPELLANT

Vs

District Collector, Namakkal District

RESPONDENT

Date of Decision : 29-03-2000

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 205, 205(1), 205(11), 205(12), 205(2)

Citation : (2000) 03 MAD CK 0102

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : V.R. Rajasekaran, for the Appellant; K.R. Tamizhamani Special Government Pleader on behalf of the Respondent, for the Respondent

Final Decision : Dismissed

Judgement

A. Raman, J.—This writ petition is filed by the petitioner, challenging the Notification issued by the respondent. Under Section-205(11) of the Tamil Nadu Panchayats Act, 1994 The Notification is to the effect that the petitioner, who is the Vice-President of N. Pudupattai Village Panchayat will stand removed from the post under Section-205 (11) of the Act. Therefore, the present Writ Petition is filed, challenging same. The petitioner was elected as the Vice-President of N. Pudupatti Village Namakkal Taluk.

2. Learned Counsel for the petitioner submitted that there is violation of the principles of natural Justice, in that the order notifying and removing the petitioner from the post of Vice-President does not contain any reasons. The authority is bound to give reasons. Further, when to the show-cause notice, the petitioner has given by a reply, further opportunity ought to have been given by the respondent before passing any order. Therefore, according to the petitioner,, the Writ Petition is maintainable.

3. Per contra, the learned Special Government Pleader Mr. K.R. Tamizhamani would contend that it is not incumbent upon the authority to give further

opportunity to the petitioner.

4. Section 205 of the Tamil Nadu Village Panchayats Act, 1994, provides for removal of the President or Vice-President. The frame of Section of the Act can be outlined as follows: Section 205 (1) gives power to the Inspector of Panchayats viz., the District Collector to initiate action against the President or Vice-President, as the case may be, either on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Village Panchayat or of his own motion, if he is satisfied that the President wilfully omits, or refuses to carry out or disobeys any provision of the Act, and if so, he shall, by notice in writing require the President to offer his explanation within a specified date with respect to his acts of omission and commission.

5. It is not in dispute here that a show cause notice was in fact issued by the District Collector on 16.08.1999, setting out the irregularities and acts of wilful omission and commission. While Section 206 of the Act applies to the removal of President, Section 206 relates to removal Vice-President. It is u/s 206(1) of the Act, the show cause notice has been issued. Section 206(2) provides that provisions of Sub-Sections (2) to (13) of the Section 205 shall, as far may be, apply in relation to removal of the Vice-President as they apply in relation to the removal of the President by the Inspector on his own motion. Thus, a show-cause notice was issued and to the show-cause notice, the petitioner herein submitted his explanation, on 26.08.1999.

6. It is to be pointed out that a meeting of the Panchayat was also convened on 7-1-2000, and in the said meeting, it was resolved by the Members of the Panchayat to accept the explanation offered by the Vice-President and not to proceed further. Thereafter, the Inspector of Panchayats viz., the Collector apparently after considering the views of the members of the Village Panchayat in this regard, on exercising his discretion, ordered removal of the Vice-President from the date of publication of the Notification viz., from 8.3.2000.

7. This is a suo motu preceding initiated by the Collector not on the representation signed by 2/3rd of the sanctioned strength of the Village Panchayat. Therefore, Section 205(2) (3) and (10) does not arise in this case. Section 205(11) provides that the Inspector may, after considering the views of the Village Panchayat in this regard, in his discretion either remove the President from office by notification with effect from a date to be specified or drop further action.

8. A reading of Sections 205 and 206 of the Act will (sic) not that it is incumbent and necessary upon the Inspector of Panchayats to State the reasons before passing the order for removal. It cannot be stated that when the Inspector of Panchayat passes an order, he is discharging duties as a quasi-judicial authority. The Act is a self-contained Act. It provides a procedure. The section does not mandate that the authority should set out the reasons for the order. The discretion to be exercised by the authority u/s 205 (11) cannot be termed as

judicial. There is nothing to show that the Collector should give reasons either for accepting the views of the panchayat or otherwise,

9. I am unable to accept the contention that the functions of the Inspector of Panchayats are quasi judicial in nature. The rights and privileges of the President and the Vice-President flow from the statutory provisions. Definitely, neither the President nor the Village Panchayat can claim any higher power than what was conferred upon them by the statute. Therefore, it cannot be stated that it is incumbent upon the authority concerned to set out reasons before passing any order. Nor Section 205 contemplates that any further hearing by the authority concerned is necessary. For it is the contention of the learned counsel for the petitioner that after his submission of the explanation, and when the members of the panchayat have passed resolution, accepting the resolution before passing of the order, the Inspector of Panchayats ought to have heard him further.

10. I do not think that any such provision can be read into the Act, requiring the authority concerned viz., the Inspector of Panchayats to give any further opportunity to the petitioner. The entire procedure to be adopted by the Inspector of Panchayats is set out in Section 205 of the Act, and in that sense, it is strait-jacketed.

11. I have already pointed out that it can never be contended that the exercise of authority by the Collector is quasi-judicial in nature. Nor it can be stated that the authority concerned is discharging any judicial power. The power given is executive in nature and not quasi-judicial.

12. In this connection, it is necessary to refer to a Division Bench of this Court reported in 1997 (II) MIJ 326, (Guruswamy v. Collector & Inspector of Panchayat) and a judgment rendered by a single Judge of this Court in W.P. No. 16814 of 1997 (Gopalakrishnan v. The State of Tamil Nadu rep. by its Secretary and another.

13. It has been held by this Court in the decision cited supra viz., 1997 (II) MIJ 326 that there is no justification for the President or Vice-President to insist that the Collector should give reasons for his accepting the views of the Panchayat.

14. Learned Counsel for the petitioner relied upon the decision of the Apex Court reported in Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,). It was a case dealing with the administrative action. In this case on hand, the allegations against the petitioner herein is that by his conduct, the petitioner has caused financial loss to the society in more than a sum of Rs. 2 lakhs. In his explanation, while the loss is accepted, the petitioner herein contended that the clerk in charge had resorted to forgery, and thus the loss has been caused. Therefore, one has to consider the seriousness or gravity of the charge. The case relied upon by the petitioner in 1990 (3) SCC 746 (cited supra) was one relating to appointment for the post of Reader in a University. Their Lordships have only stated that the power of the Chancellor is administrative in character and is not in the nature of judicial or quasi-judicial power and the Supreme Court did not

see anything in that to suggest that there is violation of the principals of natural justice. Therefore, the decision relied upon by the learned counsel for the petitioner would hardly support the petitioner's case.

15. In such circumstances, I have to hold that this Writ Petition is not maintainable, especially when a remedy is provided u/s 205(2) of the Act. u/s 205(12), the Government has got powers to cancel any notification, issued u/s 205(11) and pending such decision, on such cancellation, it may postpone the date specified in such notification. Thus, the right of appeal is indicated. Therefore, when there is an alternative remedy available to the petitioner, the challenge to the notification is not maintainable. Hence, the Writ Petition has to be dismissed. In the result, the Writ Petition is dismissed at the admission stage, however, liberty is given to the petitioner to prefer an appeal to the Government against the Notification within four weeks from the date of this order. As a consequence, WMP No. 8049 of 2000 will stand dismissed.