

(2000) 11 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No's. 7963, 7964, 8083, 8274, 7865, 8281 and 8282 of 2000

N.M. Selvakumar

APPELLANT

Vs

The State fo Tamil Nadu and 4 Others

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 8

Citation : (2000) 4 CTC 631

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : Mr. V. Selvaraj, for the Appellant; Mr. K.R. Thamizhmani, Special Government Pleader, for the Respondent

Judgement

1. One Ajit Kumar was elected as President of Palur Village Panchayat, Valavancode Taluk, Kanyakumari District. The 2nd respondent-District

Collector issued a notice on 25.9.1998 asking him to show cause as to why action should not be initiated u/s 205(1)(b) of the Tamil Nadu

Panchayat Act, hereinafter called "the Act", for the lapses pointed out therein. He submitted his reply to the said notice.

2. Thereafter on 14.3.2000, the Collector sent a notice invoking the power u/s 205(1)(a) of the Act asking the petitioner to show cause as to why

he should not be removed for the irregularities committed by him as mentioned in the said notice. The said Ajith Kumar/President filed a reply on

22.3.2000. Thereafter, the 3rd respondent- Tahsildar sent a notice on 18.4.2000; convening the meeting of the Panchayat for consideration of the

proposal for removal of the President of the Panchayat. The same was served on the President of the Panchayat on 20.4.2000. The said President

and 11 members of the Council filed a writ petition in W.P.No.7865 of 2000 challenging the notice issued by the Tahsildar on 18.4.2000 on the ground that along with the notice, a copy of the notice issued by the Collector, the reply given by the President of the Panchayat and the proposal of the District Collector, to remove the President of the Panchayat, were not enclosed so as to enable the members to consider the same in the meeting and give opinion.

3. The said President/Ajith Kumar challenged the show cause notice dated 14.3.2000 itself in W.P.No.8281 of 2000. The same has been challenged on the ground that the Collector can invoke Section 205(I)(a) of the Act only if he satisfied that the said president wilfully omitted or refused to carry out or disobey any provisions of the Act or any Rule bye-law, regulation or lawful order made or issued under the Act. It is also stated that the irregularities mentioned in the show cause notice only related to the action of the executive authority of the Panchayat and not to the President himself, and so the Collector cannot invoke Section 205(I)(a) of the Act to remove the President on that basis.

4. The same Ajith Kumar has filed another writ petition in W.P.No.8282 of 2000 seeking to issue a writ of declaration declaring that Section 205 of the Act as unconstitutional insofar as the petitioner is concerned. The abovesaid challenge is in lieu of Section 205(3) and 205(8) the Act. The Tahsildar who issued the notice dated 18.4.2000 is not obliged to send a copy of the notice issued to the President of the Panchayat, the reply and the proposal of the District Collector to remove the President. Regarding Section 205(4) of the Act, the petitioner has come forward with the plea that seven days clear notice is to be given to the members and the President; which will have no meaning if the notice of meeting alone is given without supplying the materials for consideration at the proposed meeting and so the said provision has to be struck down as suffer from arbitrariness, as it does not provide proper opportunity to the President and the members.

5. Similarly, one Mr.M.N.Sivakumar, the President of Dharmapuram village panchayat has filed the writ petition in W.P.No.7963 of 2000 challenging the notice of the Tahsildar dated 25.4.2000 convening the meeting of the Council on the basis of the show cause notice issued by the

Collector to him on 11.3.2000 and his reply dated 23.2.2000, on the same ground raised in W.P.No.7865 of 2000.

6. The said N.M.Selvakumar has filed another writ petition in W.P.No.8274 of 2000 challenging the show cause notice dated 11.3.2000 itself on

the same ground which has been raised in W.P.No.8281 of 2000.

7. The Collector in the proceedings dated 14.3.2000 informed the petitioner and the bank to the effect that the panchayat accounts can be dealt

with only after getting approval from the Block Development Officer (Panchayat), Rajakamangalam, and the same has been informed to the Bank

Officer. Challenging the said proceedings on the basis that the Collector has no Jurisdiction or given power to issue such proceedings the said

Selva Kumar has filed the writ petition in W.P.No.7964 of 2000.

8. He has also filed the writ petition in W.P.No.8083 of 2000 challenging Section 215(4) of the Act on the same ground as raised in

W.P.No.8285 of 2000.

9. In the writ petitions in W.P.Nos.7865 and 7963 of 2000, the issues raised are common, and so I am inclined to deal with the same together.

Similarly in W.P.Nos.8282 and 8083 of 2000, the petitioners have challenged Section 205(4) of the Act, and so I am inclined to deal with the said

writ petitions jointly. W.P.No. 7964 of 2000 has to be dealt with separately; as the issued raised therein requires consideration separately.

10. Mr.V.Selvaraj learned counsel appearing for the petitioners has submitted that to sustain the petitioner's case in W.P.No.8274 of 2000 etc.,

unless the Collector has come to the conclusion that the President of the Panchayat wilfully omits or refuses to carry out or disobeys any provision

of the Act, or any rule, by-law, regulation or lawful order made or issued under the Act or abuses any power vested in him, the inspector of

Panchayat cannot invoke powers given to him u/s 205(1)(a) of the Act. The learned counsel has relied on the decision in Baikunthannath Mohanty

Vs. State of Orissa and Others, . In the present cases, we have to appreciate the submissions of the learned counsel only on the basis of the show

cause notice issued; and not on the basis of the outcome of the same. It is well settled that to appreciate the dispute regarding the jurisdiction of an

authority, the action of the said authority alone has to be construed, but not on the basis of the reply or the outcome of the said show cause notice.

So, from the show cause notice I am able to see that the petitioners have paid huge amounts of the panchayat on the basis of certain expenses by issuing cheques in the name of bill clerk appointed by the petitioners. This fact is not in dispute.

11. It is also not in dispute that G.O.Ms.No.92, Rural Development Department, dated 26.3.1997 will bind on the petitioners. Clause 3.5 to

Annexure I of the said Government Order except small payments which may be paid in cash by the President after drawing a self cheque for

amounts not exceeding Rs.500 at a time, the other payments should be made by cheque to the person to whom such payment has to be made on

the basis of a bill or voucher. In the present cases; all the amounts mentioned in the show cause notice, even over and above Rs.500, have been

paid through the bill clerk appointed by him by issuing bearer cheque in his name. It is not the case of the petitioner in W.P.No.8274 of 2000 that

he does not know the Government Order or the said Government Order will not bind on him. Knowing the said instructions; the petitioners have

issued the cheques contrary to the same. There is no necessity for the petitioner in W.P.No.8274 of 2000 to issue bearer cheque to the bills in the

name of the bill clerk for the purpose of paying the amount to the person to whom the said amount has to be paid on the basis of the bills or

vouchers. The said action of the petitioners is not only irregular but also contrary to the said Government Order; and the same has been done in

spite of the specific instructions in the said Government Order. So, the said action has to be taken only as a wilful action as contemplated u/s 205

of the Act. Though the Collector has not repeated the wordings mentioned in Section 205 of the Act from the abovesaid fact, it is clear that only

after satisfying himself that the President has wilfully done the irregularities, has issued the said notice. Further, the petitioners seem to have spent

huge amount of the panchayat money by issuing such bearer cheques in the name of the bill clerk. So, the submission of the (learned counsel on this

aspect cannot be countenanced.

12. In the decision in Baikunthannath Mohanty Vs. State of Orissa and Others, it is held as follows:-

It is to be assumed that an errant Sarpanch can trample on the provisions with impunity. Therefore; the provisions in S.115 with adequate

safeguards and checks. The legislature in its wisdom has provided that mere mistake, or error or violation or abuse is not enough. The delinquency

has to be graver. That is why it made "wilful" delinquency culpable. What is then understood by the word "wilful" or "wilfully".

8. Words and Phrases. Vol. 45, gives the meaning as follows:-

Wilful - Intentional: not accidental or involuntary - done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an

act done carelessly; thoughtlessly, heedlessly or inadvertently in common parlance word "wilful" is used in sense of intentional; as distinguished

from accidental or involuntary, and "wilfully" refers to act consciously and deliberately done and signifies course of conduct marked by exercise of

volition rather than which is accidental, negligent or involuntary.

Black's Law Dictionary defines the word thus:

"willfulness," implies an act done intentionally and designedly: a conscious failure to observe care; Conscious; knowing; done with stubborn

purpose, but; not with malice.

Webster's Third New International Dictionary gives the following meaning:

"governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed".

Therefore; the consensus of the meaning of the word "wilful" is intentional deliberate calculated and conscious, with full knowledge of legal

consequences flowing therefrom (see in this connection S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, .

10. It, therefore; follows from analysis of the provisions contained in sub-section (1) of S.115 that the three essential as indicated in Tarini

Tripathy's case must not only be present but the Collector should also be satisfied that the alleged delinquency is "wilful", that" is to say, the

infraction by way of acts or omissions was wilful and not accidental; or negligent or involuntary but intentional, deliberate calculated and conscious,

with full knowledge of legal consequences flowing therefrom. This valuable safeguard was built in to the provision by way of a check on the

powers of the executive to dethrone an elected representative of the people from the august office. A Sarpanch may have failed to carry out the

provisions of the Act, or the rules; may have violated them; certain of his acts may appear to be abuse of the powers, certain acts may appear to

be detrimental to the Grama, but if such act, omission or exercise of power is not wilful; that is to say; deliberate, calculated, intentional and

conscious; the Sarpanch does not lose his throne on which he is seated by the people.

in view of the above discussion and finding on the basis of the facts of the case, the abovesaid decision cited by the learned counsel for the

petitioners may not have any assistance to decide the present cases.

13. The learned counsel appearing for the petitioners has further submitted that the petitioner has paid the said amount only as an executive

authority and not as a President. So; the Collector has no power to issue such show cause notice as if the petitioner has committed the alleged

irregularities in the capacity as President. He has also submitted that the expenses mentioned in the show, cause notice had been approved by the

council and the petitioner has disbursed the said money only as an executive authority.

14. u/s 83 of the Act, the Government may, by notification, appoint any person, who shall subject to such rules as may be prescribed, exercise the

powers and perform the functions of the executive authority of a village panchayat. Section 84 of the Act deals with the functions of executive

authority. Section 204 of the Act deals with power of the Inspector to take action against the President or executive authority, etc. On the basis of

the said section, the learned counsel appearing for the petitioners has submitted that if the petitioner in the capacity as an executive authority has

committed any irregularity, action can be taken only u/s 204 of the Act and not u/s 205 of the Act since the petitioners were discharging two

different functions, namely, President and executive authority.

15. According to the learned counsel appearing for the petitioners; the Collector should not take action for the alleged irregularities committed by

the petitioners, while discharging the functions of other posts. According to him, the two posts, namely, President and executive authority are

different; and only because the Government have conferred the said power on the President, the President is discharging the functions as an

executive authority also.

16. Though the submission of the learned counsel has to be accepted to some extent, to the facts of the present cases, the power to issue cheque

to meet the expenses is given only to the President u/s 188(3) of the Act,. The issue of cheque and the restriction is referable only to the President and not to the executive authority. Though the council has approved the expenses; the way in which the cheque is given contrary to the orders/instructions of the Government is nothing but illegal; and in view of the abovesaid facts, it cannot be said that the issuance of such cheque cannot be construed as an action done by the executive authority, but it is by the President himself. So, the inspector is correct in invoking the jurisdiction u/s 205(1) of the Act.

17. The petitioners have challenged the show cause notice itself on the basis that the Collector has no jurisdiction to issue such notice on the basis of the contentions raised, as set out above, in view of the reasons stated above, the petitioners cannot sustain the contentions to challenge the show cause notice itself. The learned counsel for the petitioners relied on the findings of the Andhra Pradesh High Court in D. Sathi Reddy Vs.

Commissioner, Panchayat Raj A.P., Hyd. and others, in support of his submission that along with show cause notice the report received by The Collector on which basis show cause notice was issued and given to the petitioners and so the entire proceedings are bad. No doubt in the said decision the Division Bench while dealing with the scope of Sec.249 of A.P. Panchayat Act and also construing the words after giving him an opportunity for explanation has held as follows:-

13. We have mentioned that the power to remove a person from an elected office is an extraordinary power. Before exercising such power the competent authority should have all the necessary material. The competent authority should consider after due application of mind that the factors mentioned in clauses (i) to (iv) of sub-section (1) or Section 249 or either of them exists, then, only the competent authority can pass an order removing the Sarpanch. The existence of the factors or either of them mentioned in clauses (i) to (iv) is essential and mandatory pre- condition for exercise of the power of removal. Not only that the law further says that the recalcitrant Sarpanch shall be given an opportunity for explanation.

The opportunity for explanation is not a ""make-believe"" opportunity of Just serving a show cause notice in all situations. There may be situations where before issuing a show cause notice the District Collector conducts enquiry

or gets an enquiry done. In such an event the show cause notice which, obviously is based on such an enquiry, is no show cause notice at all if the material (enquiry report.) based on which the show cause notice is issued is not supplied to the Sarpanch who is sought to be removed. Before further-examining this aspect it is helpful to notice sub-section (1) of Section 249 of the Act:

249. Powers of Government to remove Sarpanch; President or Chairman etc.:-(1) If in the opinion of the District Collector the Sarpanch or the

Upa-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may be the Chairman or the Vice-Chairman

(i) wilfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or

(ii) abused his position or the powers vested in him; or

(iii) is guilty of misconduct in the discharge of his duties; or

(iv) persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the

concerned local body or has become incapable of such performance, the Collector or as the case may be the Government may remove such

Sarpanch or Upa-Sarpanch; President or vice-President or as the case may be the Chairman or the Vice-Chairman after giving him an

opportunity for explanation;" (proviso is omitted)

15. it is clear that except in situations mentioned at (a) and (e) above, the Collector may cause an enquiry to be done by the officials of the

Panchayat Department, if the enquiry report is the basis for issuing a show cause notice; there cannot be an adequate opportunity for the Sarpanch

to submit the explanation without a copy of the enquiry report being supplied. Therefore, the words "after giving him an opportunity for

explanation" appearing in sub-section (1) of Section 249 of the Act should be interpreted as casting a duty on the District Collector to supply a

copy of the enquiry report to the Sarpanch. Further; the sub-section (1) gives a right to the Sarpanch to receive a copy of the enquiry report even

without there being a demand by him.

18. But, in the present cases, it is not the case of the petitioners as stated in the explanation that they were not able to give suitable reply for want

of such report. When the petitioners are able to give reply suitably to the show cause notice, now it cannot be said that they are prejudiced by not

supplying the enquiry report. Moreover, the show cause notice carries all the details. Moreover, ..""after giving him an opportunity for explanation

on which basis the learned Judges of the Andhra Pradesh High Court have come to the abovesaid conclusion, is not available in Sec.205 of the

Act. So, the said decision may not have any help to the petitioners.

19. The learned counsel appearing for the petitioners has submitted that by mere issuance of the notice to convene the meeting without supplying

the materials, namely the show cause notice and the reply given by the petitioners to the members, the entire proceedings have to be declared as

illegal as it violates the principles of natural justice. The petitioners have challenged Section 205(4) of the Act on that basis, and they have not

challenged any other provision.

20. Section 205(4) of the Act is as follows:-

A copy of the notice of the meeting shall be caused to be delivered to the President and to all the members of the village panchayat by the

Tahsildar at least seven days before the date of the meeting.,

The abovesaid provision has been challenged on the ground that according to the said Section, the Tahsildar is obliged only to give a copy of the

notice, and there is no obligation contemplated to furnish show cause notice and explanation to the members so as to enable them to appreciate the

facts of the case before expressing their views in the meeting. The said provision has also been challenged on the basis that it is contrary to the

basic principles of natural justice.

21. Before dealing with the said contention, I would like to discuss about the scheme of the said provision. After receipt of the explanation to the

show cause notice issued u/s 205(1) of the Act, if the Inspector considers that the explanation given is satisfactory, he may drop further

proceedings, as contemplated under sub-section (2) of Section 205, and if the explanation is not satisfactory, he shall forward a copy of the notice

referred to in sub-section (1) to Section 205 of the Act; to the Tahsildar and the explanation of the president if received within the specified date,

with a proposal for the removal of the president for ascertaining the views of the village panchayat. The Tahsildar shall then convene a meeting for

the consideration of the notice and the explanation, if any, and the proposal for the removal of the president, at the office of the village panchayat at a time appointed by the Tahsildar as contemplated under sub-section (3) of Section 205 of the Act. The Tahsildar shall communicate the copy of notice of the meeting to the president and to all the members of the Village panchayat at least seven days before the date of the meeting. As soon as the meeting is commenced, the Tahsildar shall read to the village panchayat the notice of the inspector and the explanation, if any; of the president for the consideration of which it has been convened. According to sub-section 8-A(I) to Section 205 of the Act; there shall be no debate in the meeting convened. Sub-section (9) to Section 205 of the Act prohibits the Tahsildar from speaking on the merits of the notice or explanation and to vote at the meeting. As contemplated under sub-section 10(1) to Section 205 of the Act; after recording the views of the village panchayat in the minutes of the meeting, the Tahsildar shall forward a copy of the minutes to the inspector. The inspector after considering the views of the Panchayat in that regard in his discretion may either remove the president from the office by notification with effect from a date to be specified therein or drop further action.

22. Now, according to the learned counsel appearing for the petitioners, the grievance of the petitioners with respect to the abovesaid procedure is that though the Tahsildar is obliged to give a notice of meeting at least seven days before the date of meeting; there is no provision contemplating supply of show cause notice, the explanation, if any, and the proposal of the Inspector to remove the president, and thereby the provision violates the principles of natural justice. The said submission cannot be accepted. The meeting contemplated under the said provision is only to get the views of the village panchayat on the action taken by the inspector. The seven days notice is contemplated only to give an opportunity to the members to keep the meeting day to be free and to attend the same without any inconvenience. It cannot be said that the members are expressing their views on the issue without knowing about the show cause notice, explanation if any, or the proposal of the inspector to remove the President. As contemplated u/s 205 (8) of the Act, the Tahsildar in the meeting has to read all the abovesaid materials before the members and the members

have to express their views on the same. Moreover; as contemplated u/s 205 (8-A) of the Act the members cannot have any debate in the meeting

regarding the said issue, it is also relevant to mention here that the views of the members are not the deciding factor to take action u/s 204 of the

Act against the president by the Inspector. It is only a guiding factor for the inspector to take further action at his discretion. So, it cannot be said

that the members are not having opportunity to know about the show cause notice; the explanation and the proposal of the inspector before

expressing their views. As stated above, they are having such opportunity to know about the same. So, the petitioners' case that Section 205(4) of

the Act has to be struck down as unconstitutional cannot be accepted. Such provision only directs the Tahsildar to send a copy of the notice of the

meeting. The ground on which such contention has been raised also cannot be accepted, in view of the reasons stated above.

23. Insofar as the contention raised in W.P.No.7964 of 2000; directing the president to get prior approval from the Block Development Officer

(Panchayat) to deal with the funds of the Panchayat is concerned, it cannot be said that such a procedure is contrary, to law. While dealing with

similar issue, S.Jagadeesan, J., in the order passed in W.P.No.144971 of 1998. dated 12.10.1998, has upheld such procedure holding that there

is no illegality in imposing such restrictions on the president in dealing with funds.

24. Further, u/s 199 of the Act, the Government may appoint such officers as may be required for the purpose of inspecting or superintending the

operations of all or any of the panchayats constituted under this Act. The Block Development Officers (Panchayat) were appointed by the

Government under the said provision. Their powers also have been dealt with u/s 200 of the Act. When they are having such powers and when

they came to know that certain irregularities have been committed by the president, to have a check on him while they deal with the public money,

they have to impose restrictions as it has been done in the impugned orders. That does not mean that the right of the president to deal with the

funds as contemplated u/s 188 (3) of the Act is taken away. But the authorities wanted to have a check on such expenses, in the interest of public

and also by exercising supervisory jurisdiction over the panchayat. So, it cannot be said that such orders are bad in law especially the same have

been passed, when the inspector has taken proceedings against the president on certain irregularities in dealing with the money.

25. For all the reasons stated above, I do not find any merits in these writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected W.M.Ps. are also dismissed.