

(1976) 02 MAD CK 0006
In the Madras High Court

P. Vijayan

APPELLANT

Vs

The Executive Officer, Avanashi Panchayat

RESPONDENT

Date of Decision : 11-02-1976

Acts Referred:

Citation : (1976) 2 MLJ 370

Hon'ble Judges : V. Ramaswami, J

Bench : Single Bench

Judgement

V. Ramaswami, J.—The petitioner is the President of the Avanashi Panchayat which consists of fourteen members. On 31st October, 1974,

nine of the members sent a written requisition to the petitioner to convene a meeting of the panchayat on 11th November, 1974 at 10-30 A.M. to

consider the following subjects:

- (a) Sanction of income and expenditure account;
- (b) To consider and and take steps to increase the revenue of the panchayat; and
- (c) any other subject which may be brought up by the President or the Executive Officer.

This requisition was delivered by the requisitionists to the Executive Officer on 31st October, 1974. The Executive Officer says in his counter-

affidavit that he gave it to the President on that very date. The petitioner further states that on 2nd November, 1974 he made an endorsement

thereon to the effect that the date and the time for the meeting would be decided and communicated. But this is denied by the Executive Officer,

and it is not necessary for me to go into that disputed question of fact as the writ petition could be decided on legal basis itself.

2. Finding that the petitioner had not called the meeting as required by the requisitionists, they sent a notice calling the meeting on 11th November,

1974 at 10-30 A.M., exercising their powers under Rule 4(2) of the rules relating to Proceedings of Panchayats and Committees of Panchayats.

The nine requisitionists attended the meeting on that date and passed as many as twenty resolutions and forwarded the same to the Executive

Officer for giving effect to them.

3. On 12th November, 1974, the petitioner notified that a meeting of the panchayat would be convened at 10 A.M. on the 21st of November,

1974, for considering about sixteen items of business. The Executive Officer was, directed by the petitioner to issue notice to the members for the

above said meeting. But the Executive Officer refused to call the meeting stating that every one of the sixteen items of business which he had listed

for the meeting, had already been considered by the nine requisitionists in the meeting held by them on 11th November, 1974 and that there was

no need for a separate meeting therefor. Thereupon, the petitioner instructed the Executive Officer that none of the resolutions said to have been

passed on 11th November, 1974 should be implemented by him on the ground that that meeting was one without jurisdiction and did not conform

to the rules relating to panchayat meetings. When the Executive Officer did not heed to his directions, the petitioner filed this petition praying for the

issue of a writ of prohibition directing the Executive Officer not to give effect to any of the resolutions passed on 11th November, 1974 by the nine

requisitionists,

4. The petitioner has raised the following grounds, among others, in his affidavit in support of the writ petition:

Firstly, the notice issued by the requisitionists to convene the meeting did not specify the precise purpose for which the meeting was to be called.

According to the petitioner, the third item put in the agenda is so vague that it could not form a subject for a meeting to be called by the Members

under Rule 4.

Secondly, the notice issued by the requisitionists in exercise of the powers under Rule 4(2) did not bear any date and it was not given in

accordance with the rules.

Thirdly, no such notice, as required by Rule 4(2), was issued to the petitioner.

There are a number of other allegations, which need not be set out here, as I am satisfied that the petitioner is well-founded even on these three grounds, which entitle him to the writ of prohibition as prayed for.

5. The relevant rules are Rules 3 and 4, which may be extracted here:

3(1) No meeting shall be held unless notice of the day and time when meeting is to be held and of the business to be transacted thereat has been given at least three clear days before the day of the meeting.

(2) In cases of urgency, the president may convene a meeting on giving shorter notice than that specified in Sub-rule (1).

(3) The agenda for the meeting of the town panchayat shall be prepared by the executive officer in consultation with president. The executive

officer may include in the agenda any subject which in his opinion, should be considered by the panchayat and shall include therein any subject

specified by the president. On any subject included in the agenda, the president as well as the executive officer shall have the right of recording his

views in a note and such note shall be circulated to the members or placed before the panchayat before or at the time of the consideration of such

subject by the panchayat.

(4) The agenda for the meeting of a village panchayat shall be prepared by the president. The president may include in the agenda any subject

which in his opinion should be considered by the panchayat. On any subject included in the agenda, the president shall have the right of recording

his views in a note and such note shall be circulated to the members or placed before the panchayat before or at the time of the the consideration

of such subject by the panchayat.

4 (1). The president shall, on the requisition in writing of not less than one-third of the members then on the panchayat, convene a meeting of the

panchayat, provided that the requisition specifies the day (not being a day observed by the panchayat as a holiday), when and the purpose for

which the meeting is to be held. The requisition shall be delivered at the office of the panchayat during office hours to the president, the executive

officer or any other person who may be in charge of the office, at least ten clear days before the date of the meeting.

(2). If the president fails within forty-eight hours from the delivery of such requisition to call a meeting on the day specified therein or within three

days thereafter, the meeting may be called by the members who signed the requisition on giving the notice provided for in Sub-rule (1) of Rule 3 to the other members of the panchayat.

(3) No meeting under Sub-rule (1) or Sub-rule (2) shall be convened at any place other than the place, where the office of the panchayat is situated.

6. It may be seen from Rule 4(1) that the purpose for which the meeting is to be held is to be specified in the notice requiring the same to be

convened. But, both the first subject mentioned in the agenda and the third subject are not specific but are vague. What "income and expenditure"

which the requisitionists wanted the panchayat to sanction are not mentioned there. Further, the meeting contemplated under Rule 4(1) being to

consider specific subjects, the meeting could not consider any other subject which is not specified there. Relying on the blanket agenda covered by

Clause (c) of the requisitioning letter, the requisitionists seem to have passed twenty resolutions of varying nature. The notice calling a meeting itself

is therefore not in compliance with Rule 4(1). Therefore, the president was well within his jurisdiction in not calling for a meeting, though one would

have expected him, to write to the requisitionists of the defects in the notice and asking them to rectify the same.

7. The notice issued by the requisitionists under Rule 4(2) was also not in compliance with that provisions. That notice did not contain any date. It

may be seen from Rule 4(2) that before they could issue the notice calling a meeting under Rule 4(2), at least five days should have lapsed after the

notice issued u/s 4(1). Since the notice itself did not bear any date there was no knowing as to when exactly this notice was issued.

8. Further, even if it is to be assumed that the notice was issued subsequent to the five days as required in Rule 4(2), it could not be, with any

definiteness, decided that there were three clear day 4 from the date of notice before the meeting as required under Rule 3, which is extracted

above The date of notice, in this case, is absolutely essential in order to find out whether it is in compliance with Rule 3 and Rule 4(2). Except

stating that one of the signatories to the requisition had signed in the notice with date ""6th November, 1974"" there was no definite statement on

what date actually the notice was issued. The notice issued for the meeting

called by the requisitionists under Rule 4(2) is, therefore, not in compliance with the provisions.

9. So far as service of the notice on the petitioner is concerned, the counter affidavit states that when the notice was sent through a panchayat servant, the president was not available in the house and that when it was sought to be served on the adult members of the family they refused to receive the same and thereupon a copy of the notice was affixed on the outer door of the petitioner's house. Neither the counsel for the petitioner nor the counsel for the respondent could rely on any particular mode of service so far as meetings of panchayats are concerned, in the absence of specific rules relating to such service. I am satisfied that the affixture of notice on the outer door of the petitioner's house is enough compliance with service of notice.

10. But, here again, there is no averment in the counter-affidavit on what date the affixture was effected in order to find whether rule 3 had been complied with. Therefore, the petitioner is well-founded even in this contention, that there was no valid service of notice on the petitioner for the meeting called on 11th November, 1974.

11. These grounds themselves are enough to invalidate the entire proceedings held on 11th November, 1974, and the Executive Officer could not have acted on the resolutions on that occasion.

12. The writ petition is accordingly allowed and the rule is made absolute. The petitioner will be entitled to his costs. Counsel's fee Rs. 150.