
(2014) 11 MAD CK 0322

In the Madras High Court

Case No : W.P (MD) No. 19168 of 2014 and M.P (MD) Nos. 1 and 2 of 2014

R. Kalaiselvi President

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 205, 205(2), 205(3)

Citation : (2014) 11 MAD CK 0322

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard both sides.

2. The Petitioner has focussed in the instant Writ of Mandamus in calling for the records relating to the show-cause notice of the First Respondent,

dated 10.6.2014 in A6/5363/2012 and to quash the same. Further, he has sought for passing of an order by this Court in directing the First

Respondent to conduct an enquiry by providing sufficient opportunity to him after serving Enquiry Report of the Third Respondent to the Petitioner

and other related documents.

3. No counter is filed on behalf of the Respondents.

4. According to the Petitioner, one P.Lakshmanan gave a complaint against him as though certain violations were committed by him while

discharging his duty as President. As such, enquiry was conducted by the Fifth Respondent and it was categorically held that the charge of grant of

approval was done prior to the assumption of office and subsequently, the same was cancelled by means of Resolution, dated 23.02.2012. That

apart, the name of the beneficiaries of the scheme Green House was also

subsequently cancelled. At this stage, the grievance of the Petitioner is that for the reasons best known to the First Respondent, another Enquiry Report was submitted without any fresh enquiry being made by him.

5. Based on the aforesaid report projected by the Fifth Respondent, it appears that the Third Respondent had submitted a report to the Second Respondent. The said report of the Third Respondent was not served to the Petitioner till today. In terms of the aforesaid report of the Third Respondent, the Second Respondent had issued a Show-Cause Notice, dated 20.7.2013 calling upon him to offer his explanation.

6. On receipt of the aforesaid letter from the Second Respondent, the Petitioner submitted his detailed explanation denying all the allegations. Also that one P.Lakshmanan, filed W.P. No. 13652 of 2013 seeking to take appropriate action against him. Thus the said Writ Petition was disposed of by this Court and this Court in order dated 12.3.2012 at paragraph 4 had made the following observations:

4. It is not in dispute that an enquiry has been contemplated on the basis of the representation of the Petitioner, dated 8.4.2013 and thereafter, a report has also been filed by the Deputy Block Development Officer to the Second Respondent on 29.04.2013. The grievance of the Petitioner is that though the said report was filed as early as on 29.4.2013, no further action has been taken till date. Hence, this Court without expressing any opinion with regard to merits of the claim of the Petitioner and the report submitted by the Block Development Officer, directs the first respondent to take appropriate action, based on the report submitted by the Deputy Block Development Officer dated 29.4.2013, after giving due opportunity to the third respondent, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

7. In this connection, the plea of the Petitioner is that the Third Respondent totally on a misconception of facts, as though the High Court had issued an order to remove him, started proceedings afresh which was closed earlier and forwarded a report to the First Respondent. On receipt of the said report, the First Respondent/District Collector(Inspector of Panchayats), Tirunelveli District had issued the impugned Show-Cause Notice, dated 4.6.2012 under Section 205 of the Tamil Nadu Panchayat Act,

1994. This report, according to the Petitioner, was not served on him. Further, he had sought for certain details based on his request, dated 21.6.2014 under the Right to Information Act and the Third Respondent through proceedings, dated 2.7.2014 replied that the records related to grant of approval by earlier President and related documents were not available in the Third Respondent Office and furnished only the report of the Third Respondent and complaint of the said Lakshmanan. On receipt of the said reply, the Petitioner furnished his detailed representation dated 14.07.2014 to the First Respondent reiterating the aforesaid facts and sought for certain documents to substantiate his contention.

8. According to the Petitioner, he learnt that the Third Respondent gave another report without conducting any enquiry and as such, he submitted his explanation to the effect that he was not given any notice or any enquiry report submitted by the Third Respondent to the First Respondent.

Later, he obtained the enquiry report under Right To Information Act on 17.11.2014. Further during the said enquiry, he vehemently insisted to examine the erstwhile President of Panchayat and predecessor of Fifth Respondent. But the Third Respondent/Block Development Officer, Snakarankovil Panchayat Union, Tirunelveli District without considering his request and without giving any room for his explanation concluded the enquiry and submitted the report with a new set of allegations and on those allegations, the First Respondent was directed to initiate proceedings under the Act.

9. Further, the Fourth Respondent earlier fixed the notice of meeting on 18.11.2014 to ascertain the views of members. But for the reasons best known to the Fifth Respondent meeting had not taken place. Now the meeting is held on 27.11.2014. As such, the Show-Cause Notice dated 10.6.2014 of the First Respondent is an illegal one.

10. The learned counsel for the Petitioner urges before this Court that the Show-Cause Notice, dated 10.6.2014 issued to him is not a valid one in the eye of law. Moreover, the Fourth Respondent had proposed to conduct a meeting on 27.11.2014. Since no opportunity was provided to him in terms of the directions issued by this Court, as per the order dated 12.3.2014 in W.P(MD)No. 13652 of 2014, the impugned show-cause notice is liable to be set aside by this Court in the interest of justice.

11. It is also represented on behalf of Petitioner that no Show Cause Notice was issued by the First respondent based on the final report of the

Third Respondent. Therefore the act of First Respondent indicating Fifth Respondent to convene the meeting is an illegal one and violative of

Section 205 of the Tamil Nadu Panchayat Act, 1994.

12. The learned counsel for the Petitioner brings it to the notice of this Court that as per Section 205(2) of the Tamil Nadu Panchayat Act, 1994, if

the explanation is received within the specified date and Inspector considers that the explanation is satisfactory, he may drop further action with

respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall

forward to the Tahsildar of the Taluk a copy of the notice referred to under Sub-section(1) of section 205 of the Tamil Nadu Panchayat Act and

the explanation of the President if received within the specified date with a proposal for the removal of the President to ascertain the views of the

Village Panchayat.

13. Continuing further, the learned counsel for the Petitioner adverts to the ingredients of Section 205(3) of the Tamil Nadu Panchayat Act, 1994

which enjoins as follows:

205. Removal of President:(1) The Inspector--

(a) of his own motion, or

(b) on a representation in writing signed by not less than two-thirds 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 wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by law, regulation, or lawful order made or issued

under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the President to offer within a specified date, his

explanation with respect to his acts of omission or commission mentioned in the notice.

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further

action with respect to the notice. If no explanation is received within the specified date and the Inspector considers that the explanation is

satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the Taluk a copy of the notice referred to in sub-section(1) 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.

(3) 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.

14. Apart from the above, the moot point for one's consideration is when the Petitioner sought for certain details under Right To Information Act in regard to the charges, he was informed that certain documents were not available with the Third Respondent. As such, it is forcefully contended on behalf of the Petitioner that it is impossible for the Third Respondent to arrive at a conclusion against the Petitioner which in turn exhibits that the entire exercise is based on non-application of mind.

15. Also that the First Respondent based on a report of the Third Respondent dated 10.09.2014 had directed the Fourth Respondent to convene the meeting.

16. The learned counsel for the Petitioner seeks in aid of the order dated 10.4.2013 in W.P(MD)No.12514 of 2014 and M.P(MD)No.1 of 2014 reported in 2013(1)CWC 797(P.Packiyam v.s. The Inspector of Panchayat/The District Collector, Virudhunagar District), wherein among other things, it is admitted that in the instant case, nothing contained in the file of the District Collector regarding the consideration of explanation offered by the President and in such circumstances, the notice issued by the Tahsildar convening a meeting of the Village Panchayat was set aside by this Court. Further the District Collector was directed to consider the explanation offered by the President and to proceed further if required.

17. It is to be noted that the ingredients of a fair hearing are:

1. Prior notice
2. Right to make representation.

3. Right to be heard

When any of these essentials wanting, the decision may be tainted with arbitrariness.

18. It is to be pointed out that in the Show-Cause Notice dated 10.6.2014, fifteen days time was granted to the Petitioner to submit her

explanation. But she submitted the explanation only on 14.07.2014.

19. As far as the present case is concerned, the main grievance of the Petitioner is that for the issuance of a Show- Cause Notice, dated

10.6.2014 in question, the First Respondent/District Collector had not considered his objections dated 14.7.2014 etc and further, now the notice

was issued fixing the meeting on 27.11.2014 and as such, the show-cause notice, dated 10.6.2014 itself is illegal or unsustainable one in the eye of

law. Since the grievance of the Petitioner revolves in a narrow campus, namely that his objection, dated 14.07.2014 addressed to the First

Respondent was not considered and before that the meeting was directed to be convened on 27.11.2014, this Court without expressing any

opinion one way or other on the merits of the subject-matter in issue and also not traversing upon the contents of the objections projected by the

Petitioner, at this stage, simpliciter, directs the First Respondent to seriously consider the explanation offered by the Petitioner, dated 14.7.2014

and the subsequent representations made by him, if any for the show-cause notice dated 10.6.2014 within a period of four weeks from the date of

receipt of a copy of this order in right earnestness and seriousness with all care, caution and circumspection and to pass necessary orders by

assigning outline of process of reasoning and to proceed further if situation so warrants in the manner known to law and in accordance with law. If

the Petitioner requests for personal hearing, prior to the passing of necessary orders by the First Respondent, then the First Respondent is directed

to provide personal hearing before passing orders in the subject-matter in issue. Till such time, the proposed conduct of meeting by the Fourth

Respondent dated 27.11.2014 is directed by this Court to be deferred and later on, it is for the First Respondent to take a final call in the subject-

matter in issue as he deems fit and proper based on attendant facts and circumstances of the case which float on the surface.

20. With the aforesaid observations and directions, the Writ Petition stands

disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.