
(2012) 11 MAD CK 0243
In the Madras High Court
Case No : Writ Petition No. 927 of 2011

R. Sugumar

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Citation : (2013) 1 MLJ 27

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : P. Rajendran, for the Appellant; N. Srinivasan, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—The petitioner was working as Village Assistant in the third respondent-Panchayat. He committed certain gross irregularities and was suspended. The suspension was challenged in W.P. No. 9967 of 2008 and the writ petition came to be dismissed on 12.7.2010 holding as follows: 2. Admittedly, a criminal case is pending against the petitioner and even according to the learned counsel appearing for the petitioner, in the said criminal case, charge sheet has been filed and the same is pending before the learned Judicial Magistrate, Tiruvallur.

3. In view of the above stated position, there cannot be any direction to the first respondent to revoke the order of suspension. Hence, the writ petition stands dismissed. However, it is open to the petitioner to make a representation to the appropriate authority to revoke the order of suspension and it is open to the authority concerned to consider the same on merits and in accordance with law. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Thereafter, the impugned proceeding has been issued by the third respondent-President of the Panchayat and the same is under challenge.

The plea taken by the petitioner is that the Panchayat President had abdicated

his power and issued the impugned proceedings solely on the basis of the directions issued by the District Collector and the Block Development Officer. The impugned proceeding is not a notice to show cause, as the language of the notice clearly speaks of the directions given by the Collector and the Block Development Officer to remove the petitioner and appoint some other person in his place. In effect, what has been issued is not a show cause notice, but a clear direction to the third respondent to remove the petitioner and appoint another person. Hence, the entire proceedings are farce, violative of principles of natural justice, besides being arbitrary and capricious. In support of his submission, the learned counsel for the petitioner relied upon a judgment of the Apex Court in *Siemens Ltd. Vs. State of Maharashtra and Others*, for the following proposition:

9. Although ordinarily a writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, and *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, but the question herein has to be considered from a different angle viz., when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the Court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause notice.

2. Apparently, no counter affidavit is required in cases of this nature, when the order speaks for itself. Even though the third respondent initiated action for removal of the petitioner, however, states in the notice that as per the directions of the District Collector and the Block Development Officer, he has initiated action for removal of the petitioner and appoint some other person in his place. This clearly goes to show that he has not acted independently, but only at the behest of the superior authorities and the decision is foregone, as there is a specific direction to remove and appoint another person in the place of the petitioner. Such a show cause notice cannot be sustained in the eye of law, since the decision has already been taken by the third respondent to dismiss the petitioner and appoint some other person as per the direction of his superiors. The direction of the superior authority to the lower authority to do a particular thing in a particular manner will be against the service jurisprudence, especially to say that the petitioner should be dismissed and somebody else should be appointed in his place. Such an exercise by the third respondent would amount to abdication of his function and the same is also impermissible in law. Therefore, the impugned notice is set aside, however, giving liberty to the authority to proceed afresh after affording opportunity to the petitioner. The writ petition is allowed. Consequently, M.P. No. 1 of 2011 is closed. No costs.