
(2011) 09 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 21101 of 2011 and M.P. No. 1 of 2011

S. Geetha

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2011) 09 MAD CK 0160

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Mr. S. Doraisamy, for the Appellant; Ms. V.M. Velumani, Spl. G.P., for the Respondent

Judgement

The Honourable Mr. Justice V. Dhanapalan

1. With the limited prayer, the Petitioner has come out with the present Writ Petition to direct the first Respondent to pass orders on the stay petition filed along with the appeal of the Petitioner, dated 26.8.2011 against the proceedings in Na.Ka. No. 6556/2009/A3, dated 2.9.2010 on the file of the District Collector, Thanjavur and the consequential Notification published in the Tamil Nadu Government Gazette Extraordinary No. 270, dated 6.9.2010.

2. Ms. V.M. Velumani, learned Spl.G.P. takes notice for the Respondents.

3. The Petitioner was the President of Thepperumanallur Panchayat in Thanjavur District. On the allegation of irregularity, based on a complaint, the second Respondent issued a notice on 3.12.2009 u/s 205(1) of the Tamil Nadu Panchayats Act, and thereafter, the Petitioner filed her explanation to the charges levelled against her in the said proceedings/show cause notice and the proceedings initiated u/s 205 of the said Act, have been concluded by convening a meeting of the Panchayat by the Tahsildar of the concerned jurisdiction in respect of the removal proceedings and thereafter, a second show cause notice

was issued to the Petitioner, for which also, the Petitioner gave explanation on 7.7.2010 and finally, the second Respondent passed the order u/s 205(11) of the Act removing the Petitioner from the post of Panchayat President and the order of removal has been published in the Tamil Nadu Government Gazette Extraordinary dated 6.9.2010.

4. While so, the Petitioner has filed a writ petition before the Madurai Bench of this Court in W.P.(MD). No. 11828 of 2010 and the same was dismissed on 17.3.2011, against which, the Petitioner filed a writ appeal in W.A.(MD). No. 556 of 2011, which was also dismissed on 10.8.2011 with the following observations by the Division Bench:

3. It is true that in *Maria Selvam v. Government of Tamil Nadu Represented by the Secretary Department of Local Administration and Rural Development and Anr.* reported in 2006 (3) MLJ 537 decided by one of us (P.JYOTHIMANI,J), it was held that the power of the Government u/s 205(11) is a suo motu power and cannot be equated to an appellate power so as to make it as an effective alternative remedy and that has also been quoted by one of us (M.M.SUNDRESH,J) in another judgment in *C. Subramanian Vs. Government of Tamil Nadu and The Block Development Officer, Manoor Panchayat Union*, . However, it is brought to the notice of this Court that in yet another Division Bench judgment of this Court in the *District Collector cum Inspector of Panchayats Villupuram and Ors. v. S. Senthamil Selvi and Anr.* reported in 2009 (1) CTC 356, under the similar factual matrix, the Division Bench has held that when a remedy is available u/s 205(11) of the Act by way of the powers conferred to the Government, without exhausting such remedy, a Writ Petition under Article 226 cannot be maintained. The Division Bench has held as follows:

6. However, against the order which has been passed by the Inspector, the person aggrieved has the right to approach the Government u/s 205(12) of the said Act. The said provision is extracted herein below:

(12). The Government shall have power to cancel any notification issued under Sub-section (11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

4. In view of the specific finding given by the Division Bench, we see no reason to interfere with the order of the learned Single Judge. Accordingly, the Writ Appeal stands dismissed with liberty to the Appellant to make necessary application to the Government u/s 205(11) of the Act. It is made clear that if the Appellant approaches the Government by way of filing necessary application under the said provision within a period of 2 weeks from the date of receipt of a copy of this order, the Government shall decide the same on merits and in accordance with law and pass appropriate orders within 4 weeks thereafter. No costs.

5. Pursuant to the above said order of the Division Bench, the Petitioner has moved the Government u/s 205(12) of the Act by filing appeal on 26.8.2011

along with a stay petition and the same is pending before the Government and hence, the Writ Petition is filed for the above relief.

6. Mr. S. Doraisamy, Learned Counsel for the Petitioner in his submissions, has strenuously contended that if there is no decision by the Government in the said appeal before the Notification for the next local body Elections to be held in October 2011, the Petitioner will not be allowed to participate in the said Election process, and therefore, there is an urgency in giving the disposal of the stay petition filed along with the said appeal or even for disposal of the appeal within a time frame, since it is certain that there will be a Notification within a short span of time by the Government for the Election process.

7. Ms. V.M. Velumani, learned Spl.G.P. appearing for the Respondents, after going through the materials annexed in the typed set of papers filed along with the present Writ Petition and on a perusal of the relevant provisions of law, submitted that the Government has to follow the procedures contemplated under the provisions of the said Act for disposal of the appeal, and therefore, a reasonable time limit may be granted to consider the stay petition filed along with the said appeal.

8. Considering the above facts and circumstances of the case and the submissions made by Learned Counsel for the parties, taking into account the fact that the Petitioner has filed the said appeal pursuant to the judgment of the Division Bench of this Court and also taking note of the fact that the said appeal has to be disposed of before the ensuing Election process commenced, which will have an impact on the participation of the Petitioner in the Election process, and hence, it is incumbent on the part of the Respondents to consider the stay petition filed along with the appeal within a time frame.

9. In view of the same, the first Respondent is directed to dispose of the stay petition filed along with the appeal of the Petitioner, dated 26.8.2011, within a period of two weeks from today and pass appropriate orders on the stay petition on merits and in accordance with law, after affording an opportunity of hearing to the Petitioner and all others concerned.

10. With the above observations and direction, the Writ Petition is disposed of. No costs. The Miscellaneous Petition is closed.