

(2009) 04 MAD CK 0020

In the Madras High Court

Case No : Writ Petition (MD) No's. 1066 and 1067 of 2009 and M.P. (MD) .
No's. 1 and 1 of 2009

S. Udayakumar

APPELLANT

Vs

The District Collector-cum-Inspector of Panchayats, The Block
Development Officer (Panchayat), The Assistant Director
(Panchayat) and The Tahsildar

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Tamil Nadu Panchayats Act, 1994 — Section 203, 205, 205(1), 205(11), 205(12)

Citation : (2009) 04 MAD CK 0020

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : N. Dilipkumar, for the Appellant; R. Anitha, Additional Government
Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—These two writ petitions are directed against the proceedings of the first Respondent dated 30.09.2008, calling upon

the Petitioner to show cause as to why he should not be removed from the office of the President of Nangai Mozhi Village Panchayat on account

of certain charges [W.P.(MD). No. 1066/2009] and divesting the Petitioner of his powers to sign cheques [W.P.(MD). No. 1067/2009].

2. The Petitioner is the elected President of Nangai Mozhi Village Panchayat and he was elected during October, 2006. The Village Panchayat has

nine other ward members. The Petitioner was discharging his duty to the satisfaction of the Panchayat as well as to the village people. He was

instrumental in constructing the public lay out, backward class students hostel, overhead water tanks, providing cement road in the panchayat,

besides making provision for sodium vapour lamp street lights, etc. The Petitioner managed to get the funds from the constituency funds of M.L.A.

and Parliament member and funds so allotted were all used for the betterment of the village people.

3. The Panchayat members belonging to Ward Nos. 1,3 and 4 were not in good terms with the Petitioner and they are from a different political

party. Those three Councillors have been causing immense trouble to the Petitioner in his functioning as the President of the Panchayat. They have

been making false allegations against him with ulterior motives. They have submitted complaints before the first Respondent alleging irregularities

against the Petitioner.

4. The first Respondent, on the basis of the complaint preferred by the Councillors of Ward Nos. 1,3 and 4, initiated proceedings u/s 205(1) (a) of

the Tamil Nadu Panchayats Act, 1994 against the Petitioner alleging as many as four charges. For the purpose of initiating the proceedings, the first

Respondent relied on the enquiry report submitted by the Respondents 2 and 3. The first charge relates to the issuance of water supply connection

to the village people without receiving the deposit amount and water connection charges. Charges 2 to 4 relate to misappropriation of funds

without records. The enquiry conducted by the Respondents 2 and 3 was not with notice to the Petitioner and he was also not provided with a

copy of the re-port. The first Respondent, by placing reliance on the said enquiry report, issued the impugned proceedings. By way of a separate

proceeding dated 30.09.2008, the cheque signing power of the Petitioner was also taken away. While depriving the Petitioner of his powers to

sign the cheque, no mandatory notice was issued by the first Respondent. In such circumstances, the Petitioner was constrained to challenge the

order dated 30.09.2008 in W.P.(MD). No. 1066 of 2009 issued u/s 205(1)(a) of the Act and the consequential proceedings in Na. Ka.C.

eP.5/2767/07 dated 30.09.2008 in W.P.(MD). No. 1067 of 2009 issued u/s 203 of the Act.

5. Even though sufficient opportunity was granted to the Respondents to file counter-affidavit, they have not filed counter in answer to the

contentions raised in the affidavit filed in support of the writ petitions. However, the learned Additional Government Pleader has produced the file.

6. Thiru. N. Dilipkumar, learned Counsel appearing for the Petitioner would contend that there was no basis for the first Respondent to initiate an action u/s 205(1)(a) of the Act against the Petitioner. The learned Counsel attempted to explain the falsity in the charges framed against the Petitioner and as shown in the impugned order dated 30.09.2008. The learned Counsel would further contend that the first Respondent miserably failed to comply with the mandatory provisions of Section 205 of the Act before issuing the impugned notice and as such, there is a procedural illegality in the impugned proceedings and as such, the same is liable to be quashed. It was the further contention of the learned Counsel that in the meeting convened by the Tahsildar to ascertain the views of the village panchayat, there was no majority opinion against the Petitioner and as such, the first Respondent was bound to consider such views of the village panchayat. In any case, according to the learned Counsel, there was no bonafides in taking action against the Petitioner and it was only on account of the false allegations made by the rival faction, the issue has gone out of proportion, which resulted in issuing the charge sheet.

7. Mrs. R. Anitha, learned Additional Government Pleader would contend that the proceedings dated 30.09.2008 was only a show cause notice and the Petitioner is at liberty to submit his objection and on a consideration of the said objection, appropriate action would be taken by the Collector. Therefore, according to the learned Additional Government Pleader, the writ petition is too premature and as such, it is liable to be dismissed.

8. With respect to the writ petition challenging the order dated 30.09.2008 issued u/s 203 of the Act, the learned Additional Government Pleader conceded that no notice was issued to the Petitioner. However, according to the learned Additional Government Pleader, the Collector was only exercising his emergency powers and as such, no notice was required to be issued to the Petitioner.

9. W.P.(MD). No. 1066/2009:

The proceedings dated 30.09.2008 u/s 205(1)(a) of the Act was initiated by the first Respondent on account of certain allegations made against the Petitioner. In the impugned proceedings, the Collector has detailed the charges levelled against the Petitioner and he was asked to submit his

explanation within 15 days from the date of receipt of notice. There was nothing in the impugned order to show that the first Respondent has made

up his mind to remove the Petitioner from office. The first Respondent was only exercising his powers u/s 205 of the Act. Admittedly, the first

Respondent is a statutory authority and he was vested with the power to remove the President either of his own motion or 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.

10. The first Respondent was conferred with the jurisdiction to take action either on his own motion or on a representation from the members of

the village panchayat. In either case, he should be satisfied that the President willfully omits or refuses to carry out or disobeys any provisions of the

Act or any rule, by-law, regulation, or lawful order made or issued under the Act or abuses any power vested in the Panchayat President. It was

only after satisfying himself that a situation has arisen to take action against the President, he was given powers to issue notice to the President. In

case the Collector was of the opinion that there were prima facie materials to take action against the President, he was expected to issue a notice in

writing to the President requiring him to offer his explanation with respect to the act of commission or omission as made mentioned in the notice.

On such receipt, the President was expected to submit his objection. In case the objection submitted by the President within the time granted was

found to be satisfactory, the Collector is at liberty to drop further action in the matter. It was only when the explanation submitted by the President

was not satisfactory, or no explanation was submitted by the President, which compels the first Respondent to proceed with the matter.

11. The explanation submitted by the President has to be considered by the Inspector on merits. Such a course was absolutely necessary, as

otherwise, even for flimsy reasons, proceedings u/s 205 of the Act could be taken. Therefore, the Inspector was required to consider the acts of

commission or omission as mentioned in the notice and the explanation submitted by the President, to the said notice. If on a consideration of the

explanation submitted by the President, the Inspector was of the considered opinion that there are no grounds to proceed against the President, the

Inspector has to put an end to the further proceedings. However, things would be different, in case no explanation was filed within the time

permitted by the Inspector or on a consideration of the factual matrix, the Inspector was of the opinion that the explanation was not satisfactory

and the matter has to be proceeded further.

12. When the explanation submitted by the President was found to be not satisfactory or no explanation was submitted, the Inspector has to

forward a copy of the notice issued u/s 205(1)(a) of the Act as well as the explanation submitted by the President, in case of any such objection

was received by the Inspector within the time permitted, for the purpose of ascertaining the views of the village panchayat with respect to the

question as to whether the President has to be removed. In case such a notice was received, the Tahsildar was duty bound to convene a meeting

of the village panchayat for the purpose of placing the proceedings before the Council for its views. The notice of meeting has to be issued not only

to the members of the village panchayat but also to the President against whom action was proposed. The Tahsildar was also obliged to give seven

days clear notice before the date of meeting, so as to enable the President and the members to attend the meeting and to take part in the

deliberations. The meeting has to be presided over by the Tahsildar instead of the usual practice of the President occupying the Chair.

13. When a meeting was convened for the purpose of ascertaining the views of the village panchayat in respect of the proceedings initiated against

the President, the Tahsildar has to read the notice issued by the Inspector and the explanation submitted by the President as well as the proposal

for the removal of the President and the Council members were expected to express their views. There is no provision to debate the issue during

the meeting and the Tahsildar was not expected to speak on the merits of the notice or explanation submitted by the Panchayat. Similarly, the

Tahsildar has no power to cancel the meeting and he was only expected to preside over the meeting. The views of the panchayat shall be recorded

in the Minutes of the meeting and a copy of the Minutes should be forwarded to the Inspector through the Tahsildar.

14. The Inspector is given power to pass filial orders as per Section 205(11) of the Act. While considering the issue as to whether the President

has to be removed, the Collector has to take into account the views of the village panchayat. The panchayat, being a body corporate established

for undertaking welfare measures for the villagers, greater weight should be given to the views of the members of the village panchayat in the matter

regarding removal of a President. Therefore, the Collector was required to consider the views of the village panchayat with an open mind. It is true

that discretion was given to the Collector either to remove the President from office by notification or to drop further action, after considering the

explanation submitted by the President as well as the views of the village panchayat.

15. The question of considering the explanation of the President arises at two stages. Initially, before taking further action as per Section 205(2) of

the Act, the explanation has to be considered by the Inspector and he has to decide as to whether further proceedings have to be taken on the

basis of the notice issued to the President. It is true that Section 205(11) of the Act, nowhere says that the Inspector has to consider the entire

matter afresh including the explanation submitted by the President at the time of considering the views of the village panchayat. However, the

Inspector was exercising his discretion for the purpose of removing an elected President. The electorate has given a mandate to the President to be

in office. By removing the President from his office, the Collector was removing an elected member of the panchayat. Therefore, the proceedings

cannot be taken so lightly by the Inspector. In a village democracy, the elected members of the village occupy a pivotal position and as such, in

the ordinary nature of things, the Inspector was not required to interfere in the affairs of the village panchayat, except as permitted by the provisions

of the Act. Since the order passed by the Inspector u/s 205 (11) of the Act has serious civil consequences, insofar as the President is concerned,

the issue has to be considered seriously by the Collector. Therefore, he should consider the explanation submitted by the President as well as the

views expressed by the members of the village panchayat and before taking a final decision to exercise the discretion, the Collector has to

independently evaluate the nature of charges levelled against the President, his explanation with respect to each of such charges and the views

tendered by the village panchayat.

16. The members of the village panchayat would be in a better position to offer more remarks about the conduct of the President. The charges levelled against the President were all in relation to the conduct of the Panchayat. Therefore, everything would be within the knowledge of the members of the village panchayat. They would be in a better position to comment upon the charges framed against the President. Therefore, when the panchayat members expressed their opinion in one way or the other, the Collector has to consider their views seriously. Though there is no provision to the effect that in case the Collector disagrees with the views expressed by the village panchayat and proceed either to remove the President or to drop further auction, the Collector is bound to express his opinion at least in the file as to why he disagrees with the views tendered by the village panchayat. If it was permissible for the Collector to take action without reference to the opinion tendered by the village panchayat, there was no requirement in the provision to consider the views of the village panchayat.

17. In case the Collector disagrees with the views expressed by the Panchayat Council and proceed further, the Collector has to hear the President. The Collector was required to give notice to the President and he should be heard before taking such a drastic action like removal from office. Even though there is no provision to give such notice, principles of natural justice should be read into the statute. The proceedings against an elected member cannot be taken so lightly. Therefore, principles of natural justice should be strictly followed in such cases.

18. The order passed by the Collector has got far reaching consequences insofar as the President is concerned. In case the President was removed by the Collector, as provided u/s 205(11) of the Act and unless the notification was cancelled by the Government u/s 205(12) of the Act, the President would be ineligible for election as President until the expiry of three years from the date specified in the notification. Therefore, the Inspector was expected to consider the matter with little seriousness. He has to evaluate the materials before coming to a conclusion that the President has to be removed or that further action should be dropped. In any case, the Collector has to consider the views expressed by the village panchayat without any reservation.

19, The notice impugned in W.P.(MD) No. 1066/2009 is only a show cause notice issued under 205(1)(a) of the Act. The Petitioner was

required to submit his objection within a period of 15 days. The explanation now offered by the Petitioner in the affidavit filed in support of the writ

petition could be submitted to the first Respondent by way of an explanation to the notice. The first Respondent was obliged to consider the

explanation before taking further action in the matter. The Petitioner cannot be heard to say that action would be taken against him by the Collector

and he would be removed. The Collector was exercising a statutory function and he was expected to proceed only in case there are materials

warranting an action to remove the President. Therefore, I am of the view that the apprehension raised by the Petitioner has no basis. It is open to

the Petitioner to submit his objection to the impugned notice. Since the Petitioner has also submitted his objection dated 14.10.2008, the first

Respondent is bound to consider the said objection. According to the Petitioner, he was in possession of certain fresh materials to substantiate his

contention. All those materials could be placed before the first Respondent. The Petitioner is granted four weeks time from the date of receipt of a

copy of this order to submit his additional explanation to the show cause notice dated 30.09.2008. The explanation submitted by the Petitioner has

to be considered by the first Respondent along with the views expressed by the village panchayat and an opportunity of personal hearing should be

given to the Petitioner before passing final orders u/s 205(11) of the Act.

20. W.P.(MD). No. 1067/2009:- The order impugned in W.P.(MD). No. 1067/2009 has been passed by the first Respondent in exercise of the

power conferred u/s 203 of the Act.

21. Section 203 of the Act empowers the Inspector to take immediate action, in case he was of the opinion that there was an emergent situation to

provide for the execution of any work, or the doing of any act which a panchayat or executive authority or commissioner or secretary is

empowered to execute or do, and the immediate execution or doing of which is in his opinion necessary for the safety of the public. In such cases,

the Inspector/Collector was entitled to pass appropriate orders for executing such work or doing such act and for payment of the amount for such

works from the panchayat fund in priority to any other charges.

22. The power given to the Collector or Inspector was an emergency power to do certain; acts in the interest of the panchayat. It was not an ordinary power to interfere in the affairs of the village panchayat. In case the village panchayat President or Executive Authority makes default in performing any of the duties imposed by or under the provisions of the Act, the Inspector was given powers u/s 204 of the Act to take appropriate action. The Collector or Inspector was not obliged to use the emergency powers as a routine measure. There was nothing mentioned in Section 203 of the Act which authorises the Collector to divest the President of his cheque signing powers during the pendency of a proceeding u/s 205 of the Act. The President would be divested of his powers only in the event of an order passed u/s 205(11) of the Act. Unless and until a notification was issued u/s 205(11) of the Act, the President has to be permitted to exercise his powers as a President of the panchayat. The charge against the Petitioner was not something related to his failure to sign the cheque along with the Vice President. The charges were acts of misappropriation warranting action u/s 205 of the Act. By way of the impugned proceeding, the Collector, in exercise of the powers u/s 203 of the Act, has divested the Petitioner of his power to sign the cheque along with the Vice President. Not even a notice was issued to the Petitioner before issuing such proceedings. It was only as a consequential proceedings initiated u/s 205 of the Act, the Collector has issued the impugned proceedings divesting the Petitioner of his power to sign the cheque. In any case, before divesting the Petitioner of his power to sign the cheque, reasonable opportunity should have been given to him. It is not as if the moment action u/s 205 of the Act was taken against the President, he should be divested of the power to sign cheques. Section 203 of the Act is not intended for such purposes. It was only to tide over an emergency situation, power is given to the Collector u/s 203 of the Act. The said power cannot be used in an ordinary situation. In any case there was a clear violation of principles of natural justice also, as the Petitioner was not given notice before divesting him of the power to sign the cheques.

23. The learned Additional Government Pleader has not placed any material before me to show that whenever an action was taken u/s 205 of the Act, the first Respondent was entitled to pass orders divesting the President of his power to sign the cheque. In the absence of a particular

provision or a Government Order, authorising the Inspector to such drastic action, the Inspector was not expected to use the emergency powers to divest the President of his cheque signing power.

24. In the result

(i) W.P.(MD) No. 1066/2009 is dismissed;

(ii) W.P.(MD). No. 1067/2009 is allowed and the impugned order dated 30.09.2008 is quashed.

Consequently, the connected miscellaneous petitions are closed. No costs.