
(2009) 08 MAD CK 0282

In the Madras High Court

Case No : W.A. No"s. 1257 and 1258 of 2008 and M.P. No"s. 1 and 2 of 2008

The District Collector and Inspector of District Panchayat and
The District Development Officer

APPELLANT

Vs

Devi Parasuraman and The Manager, Central Bank of India,
Marakkanam Branch
The District Collector and
Inspector of District Panchayat, The Assistant Director, Rural
Development and Land Administration and The Tahsildar Vs
Devi Parasuraman and The Block Development Officer

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Panchayats Act, 1958 — Section 149A, 149A(1), 149A(11), 149A(2)

Tamil Nadu Panchayats Act, 1994 — Section 205, 205(1), 205(10), 205(11), 205(12)

Citation : (2009) 4 LW 778

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J;P. Jyothimani, J

Bench : Full Bench

Advocate : P. Wilson, A.A.G assisted by D. Sreenivasan, AGP, for the Appellant;
V. Ramesh and T. Thiagarajan, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—In exercise of power conferred by Sub-section (11) of Section 205 of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as the "Panchayats Act"), the District Collector?cum?Inspector, District Panchayat, Villupuram District, ordered freezing of accounts of the Panchayat standing with the Bank and removed the President of the Panchayat. Learned single Judge set aside the said order as the District Collector-cum-Inspector has not shown any reasons whatsoever for passing the order removing the respondent-petitioner from the post of President.

2. Section 149-A(2) of the then Tamil Nadu Panchayats Act, 1958 (XXXV of 1958) was parimateria similar to Section 205 of the Panchayats Act, 1994. Section 149-A of the Tamil Nadu Panchayats Act, 1958 fell for consideration before a Division Bench in N.P. Guruswamy v. The Collector & Inspector of

Panchayat 1997 (2) MLJ 326, wherein this Court held that exercise of discretion u/s 149-A(2) is neither judicial nor quasi-judicial and, therefore, the Collector-cum-Inspector is not bound to give reasons for his accepting the views of the Panchayat.

The judgment in N.P. Guruswamy's case (supra) having doubted, the case has been referred to this Larger Bench.

3. We have heard the parties and perused the record.

4. u/s 149-A of the Panchayats Act, 1958 (Old Act), the Collector-cum-Inspector of Panchayat was empowered to remove the Panchayat President following the prescribed procedure. In N.P. Guruswamy's case, on behalf of the appellant it was argued that removal u/s 149-A was quasi-judicial in nature and in absence of reasons whatsoever given by the Inspector, the order was not valid. Rejecting such contention, learned Judge, while observed that power exercised by the Collector was not quasi-judicial, also held that it was not necessary to give reasons in accepting the report for removal of the President. Section 149-A(1) provides that on representation in writing signed by not less than two-thirds of the sanctioned strength of the Panchayat containing the statement of charges against the President and presented in person to the Inspector by any two of the members of the Panchayat, only when the Inspector is satisfied that the President wilfully omits or refuse to carry out or disobeys any provisions of the Act, he shall, by notice in writing, require the President to offer his explanation and only, thereafter, if not satisfied, forward the copy of the notice and explanation to the Tahsildar for convening a meeting for considering the proposal for removal of President and on convening such meeting, if majority of the Panchayat expresses its view that the President should be removed from office, only then the President is removed. In the said case, the Court observed as follows:

4. The main contention of the learned Counsel for the appellant is that the function of the Inspector acting u/s 149-A(1) is quasi-judicial in nature and, therefore, the Inspector was bound to give reasons. We are unable to accept this contention for the rights and privileges of the President flow from the statutory provisions and he cannot claim any right which is not secured to him under the enactment. In the administration of the Panchayat certain procedure is envisaged. If two-thirds of the members of the Panchayat are not satisfied with the President, and if they present a representation in writing as provided u/s 149-A(1)(b), the Inspector shall act under Sub-section (2), i.e., if he considers it necessary, he has to consider the explanation of the President and, if he finds that the explanation is not satisfactory, he shall direct the Tahsildar to convene a meeting. After considering the views of the Panchayat the Inspector shall in his discretion, either remove the President from office by notification or drop further action. This exercise of the discretion cannot be said to be judicial or quasi-judicial. We see no justification for the President insisting that the Collector should give reasons for his accepting the views of the Panchayat. We agree with

the learned Judge and dismiss the writ appeal.

5. The scope and applicability of Section 149-A subsequently fell for consideration before a Division Bench of this Court in *S. Subramanian Vs. V. Vellaikaanu and Others*, . In the said case, this Court noticed that in the case of *N.P. Guruswamy v. The Collector & Inspector of Panchayats* (supra), the Inspector agreed with the views of the Panchayats and accepting such report, ordered to remove the President and, therefore, the Court observed that no reason was required to be recorded. On the other hand, the case of *Subramanian* was different. In the case, the Inspector differed with the majority decision of the Panchayat and come to a conclusion that except one, rest all the charges framed against the President is proved. In this background, the Division Bench held that it was necessary for the Inspector to give reasons for coming to a conclusion that the charge has been proved and observed as follows:

20. In the light of the decisions relied upon by the learned Counsel for the petitioner and referred to above, we are of the opinion that what is done by the Inspector u/s 149-A(11) of the Act to the prejudice of the President without accepting the view of the Panchayat expressed in favour of the President, is a quasi-judicial act, for which reasons have necessarily to be given and that even if it is administrative in character, reasons must have been given by the Inspector for coming to the conclusion that the petitioner was guilty of 9 out of the 10 charges as had been held by the first respondent so that the petitioner may be aware for what reasons or on what grounds his explanations had been rejected and he had been found guilty of the 9 charges, and that since no reason could be found in the impugned orders, and no materials could be placed before the Court, this Court is entitled to interfere by exercising the powers conferred under Article 226 of the Constitution and set aside the orders. In this view, we are of the opinion that it is not necessary to place the additional grounds raised in the writ petition before a Bench of five Judges. We allow the writ petition and quash the impugned orders of the respondents with costs.

6. Section 205, which is similar to old Section 149-A, reads 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, bye-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 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 removal of the President, at the office of the Village Panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the President and to all the members of the Village Panchayat by the Tahsildar at least seven days before the date of the meeting.

(5) The Tahsildar shall preside at the meeting convened under this Section and no other person shall preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the President by the Tahsildar under Sub-section (6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under Sub-section (3). Notice of not less than seven clear days shall be given to the members and the President of the time appointed for the adjourned meeting.

(7) Save as provided in Sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any and the proposal for the removal of the President under this Section shall not for any reason, be adjourned.

(8) As soon as the meeting convened under this Section is commenced, the Tahsildar, shall read to the Village Panchayat the notice of the Inspector and the explanation if any, of the President [and the proposal for the removal of the President] for the consideration of which it has been convened.

[(8A) There shall be no debate in any meeting under this section.]

(9) The Tahsildar shall not speak on the merits of the notice or explanation nor shall he be entitled to vote at the meeting.

(10) The views of the Village Panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11) The Inspector may, after considering the views of the Village Panchayat in

this regard, in his discretion either remove the President from office by notification with effect from a date to be specified therein or drop further action.

(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.

[(13) Any person in respect of whom a notification has been issued under Sub-section (11) removing him from the office of President shall, unless the notification is cancelled under Sub-section (12), be ineligible for election as President until the expiry of three years from the date specified in such notification as postponed by the order, if any, issued under Sub-section (12)].

7. From the aforesaid provision, the following fact emerges:

As per Sub-section (1), the Inspector is to give a notice in writing to the President to offer his explanation in respect of his acts of omission and commission.

Under Sub-section (2), if explanation is satisfactory, the Inspector should drop the proceeding, but in case of non-satisfactory explanation or no explanation, the matter to be forwarded to the Tahsildar alongwith notice under Sub-section (1) for ascertaining the views of the Panchayat.

Under Sub-sections (3) to (9), the Tahsildar is to convene a meeting of the village panchayat for consideration of the notice, explanation and the proposal, if any, for removal of the President. For that, the President is also to be noticed and after reading the notice and the explanation, all the members of the village panchayat have to be heard.

Under Sub-section (10) the village panchayat will duly record the minutes of its meeting and copy of the minutes shall be forwarded by the Tahsildar to the Inspector.

Under Sub-section (11), the Inspector, after considering the views of the village panchayat in this regard, either remove the President from office or drop further proceeding.

Under Sub-section (12), the Government have power to cancel the notification issued under Sub-section (11).

8. Now the question arises:

a) Whether action u/s 205 for removal of the President of Panchayat is quasi-judicial; and

b) Whether for such removal of the President of Panchayat, the Inspector is bound to record reasons.

9. In Province of Bombay Vs. Kusaldas S. Advani and Others, , the Supreme Court held as follows:

i) that if a state empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis*, and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

10. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the Supreme Court while held that aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice, further held that the rules could operate only in areas not covered by any law validly made. The Apex Court held as follows:

20. ...The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that it that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years, many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry.

11. In *Union of India and others Vs. E.G. Nambudiri*, , the question fell for consideration whether for an administrative decision reason should be stated. In the said case, the Supreme Court held "Order of an administrative authority, which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for

decisions". However, the Supreme Court observed that the competent authority has no licence to be arbitrary; he must act in a fair and just manner; he is required to consider the question raised and examine the same in the light of the objections raised. If such an order is challenged in a court of law, it is always open to the competent authority to place the reasons before the Court, which may have led to the rejection of the explanation.

12. In *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , Supreme Court held that application of mind of an authority at a particular point of time could only be revealed when the order records its reasons. Even if the Section is silent about recording reasons, it is obligatory on the authority, while passing order, to record the reasons.

In *Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others*, , the Supreme Court held as follows:

48. In any event, when civil consequences ensue, there is hardly any distinction between an administrative order and a quasi-judicial order. There might have been difference of opinions at one point of time, but it is now well settled that a thin demarcated line between an administrative order and quasi-judicial order now stands obliterated see *A.K. Kraipak v. Union of India* and *Chandra Bhavan Boarding and Lodging v. State of Mysore* and *S.L. Kapoor v. Jagmohan*.

49. Recently, in *V.C. Banaras Hindu University v. Shrikant* this Court stated the law thus:

51. An order passed by a statutory authority, particularly when by reason whereof a citizen of India would be visited with civil or evil consequences must meet the test of reasonableness.

13. Admittedly, the Inspector is the statutory authority to remove the President u/s 205 of the Act. He has power to do such act which will prejudicially affect the subject, i.e., the President, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it and the State Government has power to alter such decision and notification is issued under Sub-section (11) and may, pending decision on such cancellation, postpone the date specified under such notification.

14. In view of the aforesaid provision of law and the decision of the Supreme Court as referred to above, while we uphold the decision in *Subramanian's* case (supra) that the act of the Inspector u/s 149-A (new Section 205) of the Act is quasi-judicial in nature, further hold that the decision in *N.P. Guruswamy's* case (supra) does not lay down the correct law.

15. An order passed by a statutory authority if visited with civil or evil consequences must meet the test of reasonableness. If it prejudicially affects the subject, for example, the President in the present case, then the authority should give reasons. In the case of *Consumer Action Group* (supra) the Supreme Court held that application of mind of an authority at a particular point of time could

only be revealed when the order records its reasons. Therefore, u/s 205, if the Inspector being satisfied with the explanation drops the proceeding, he should record it in the proceeding. In case of unsatisfactory explanation or non-explanation, the Inspector cannot take a decision of his own, but required to forward the matter to the Tahsildar for the decision of the Village Panchayat. It is the Village Panchayat, which records reasons in its minutes of the meeting. Normally the Inspector has to act on such decision. In such case, reason being on record, for acceptance of such report no further reason required to be recorded by the Inspector. However, in case the Inspector differs with the decision of the Village Panchayat, to test the reasonableness of such decision, the Inspector is not only supposed to record the reason, but also required to follow the rules of natural justice by communicating the reasons to the President by giving an opportunity to explain before coming to a conclusion.

16. In N.P. Guruswamy's case (supra) the Inspector agreed with the views of the Village Panchayat for removal of the President and, therefore, the Court rightly held that no reasons were required to be recorded.

In the case of Subramanian (supra), the Inspector having differed with the views expressed by the Village Panchayat and has ordered to remove the President, the Court rightly held that for such difference of opinion, reasons were necessarily to be recorded by the Inspector, even if it is administrative in character.

17. In the light of the discussions made above, we summarise our views as follows:

- i) An act of the Inspector u/s 205 is quasi-judicial in nature;
- ii) If the Inspector is satisfied with the explanation submitted by the President u/s 205, he is required to record his satisfaction for dropping the proceeding; and
- iii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceeding against the President, he is not only required to record the reasons for differing with the views of the Village Panchayat, but before taking any decision to remove the President, the Inspector is also required to provide further notice to the President intimating the reasons for difference and can issue notification only on consideration of cause, if any, shown by the President.

18. Recording our aforesaid view, we refer back the matter to the Division Bench for consideration of the case on merits.