(2011) 03 MAD CK 0582

In the Madras High Court

Case No : W.A. No. 2389 of 2010

The State of Tamil Nadu APPELLANT

Vs

S. Ramasamy RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:
Tamil Nadu Panchayats Act, 1994 — Section 205, 205(1), 205(1)(a), 205(2), 205(9)

Citation : (2011) 5 CTC 197 : (2011) 6 RCR(Civil) 1969

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : G. Desingu, Special Government Pleader, for the Appellant; R.N. Amarnath, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This Writ Appeal at the instance of the State, challenges the order dated 22 September 2010 in W.P. No. 10632/2010 whereby and where under, the learned Single Judge was pleased to quash the order passed by the District Collector dated 30 April 2010 removing the Respondent from the post of President of the Jampadai Village Panchayat.

The facts in outline:

The Respondent was elected as President of Jampadai Panchayat, Villupuram District during the year 2006 for a term of five years.

2. While he was functioning as President, the District Collector, Villupuram, in his capacity as the Inspector of Panchayat, issued notice on 4th October, 2007 invoking Section 205(1)(a) of the Tamil Nadu Panchayats Act, 1994, alleging the following misconduct:

(i) That you have incurred expenses without Form 19 and sub-vouchers;

(ii) Administrative sanction was accorded by the District Collector for Drought Relief works in this office Roc. No. A8/2197/2007 dated 6.6.2007 and it was also ordered that the expenditure for work should be met from Panchayat funds. Besides not starting the work, sufficient funds also were not kept in the Panchayat funds and thus, misappropriated Panchayat funds;

(iii) Expenditure were incurred in excess of the ceiling limit fixed by the Government for the maintenance of hand pump, water tank and street light and also failed to obtain specific sanction of the Panchayat for the excess expenditure;

(iv) Entries were not made in the relevant records for the maintenance and procurement of spares for water supply and street light.

3. The Respondent was called upon to show cause as to why he should not be removed from the office of President. The principal charge relates to incurring expenditure without entering the same in the statutory Form and unaccompanied by Vouchers. The Respondent submitted a detailed explanation on 21st November, 2007. However, it was not accepted by the Inspector of Panchayat. Therefore, the Inspector of Panchayat directed the Tahsildar of Sankarapuram to convene a meeting of the Village Panchayat to ascertain the views of the members of Panchayat. The meeting was held on 6 March, 2008. All the members who attended the meeting expressed their views unanimously that the explanation submitted by the Respondent could be accepted and made a request to drop the charges. The Tahsildar submitted his report to the Inspector of Panchayat. Thereafter, the Inspector of Panchayat issued a show cause notice indicating that he is not accepting the views expressed by the Village Panchayat and as such, the Respondent was asked to submit his explanation as to why he should not be removed from office. The Respondent in his explanation stated that he was new to the public office and as such, during his first year, he has committed certain procedural errors and the same would not recur in future. In spite of the said explanation, Inspector of Panchayat passed an order on 30 April 2010 whereby and where under, the Respondent was removed from the post of President. It was later notified in the Gazette. Feeling aggrieved, the Respondent filed a Writ Petition in W.P. No. 10632/2010.

4. The District Collector cum Inspector of Panchayat, Villupuram in his Counter Affidavit justified the action taken against the Respondent. According to the Inspector of Village Panchayat, the Panchayat had incurred expenditure from the Village Panchayat funds to the tune of Rs. 1,78,527/- without the support of vouchers. The Respondent was not in a position to submit satisfactory explanation and as such, it was construed that he has fabricated the bills to cover up the irregularities. The Inspector of Panchayat justified the other charges also in the similar manner. It was further contended that though all the members have expressed their opinion in favour of the Respondent, they did not place any supportive material to prove the non-involvement of the Respondent in the irregularities concerned and as such, the views expressed by the members were rejected. It was contended that action was taken fully in accordance with Section 205(2) of the Tamil Nadu Panchayats Act, 1994 and the order has become final in view of the Notification issued by the Government.

5. The learned Single Judge found that the charge-sheet was vague in material particulars. Though in the notice issued u/s 205(1)(a) of the Act there was no mention about the abuse of power, the final order proceeds as if the Respondent abused his power and caused loss to the panchayat. The learned Judge opined that for the purpose of taking action u/s 205(1) of the Act there should be wilful omission or wilful abuse of power and in the absence of any such allegations against the Respondent, it was not open to the Inspector of Panchayat to remove him from office. Accordingly, the learned Judge quashed the impugned order. It is the said order which is challenged in this Writ Appeal.

6. We have heard the learned Counsel for the parties.

The statutory language:

7. The Tamil Nadu Panchayats Act, 1994 contains provisions regarding removal of President and Vice President of Village Panchayats, removal of Chairman and Vice Chairman of Panchayat Union Council as well as removal of President, Vice President, Chairman, Vice-Chairman or member convicted u/s 246-A of the Panchayat Act.

8. Section 205 of the Act enables the Inspector of Panchayat to initiate proceedings against the President of the Panchayat either on his own motion or on a representation in writing signed by not less than 2/3rd 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. The provision also contains detailed procedure regarding issuance of notice to the President, consideration of explanation, convening meeting for the purpose of consideration of the explanation by the Village Panchayat, the procedure for conducting meeting, consideration of the views of the Village Panchayat by the Inspector and the ultimate decision in the matter of removal of President.

9. Section 205 of the Act is a very drastic provision intended to be exercised in very exceptional circumstances. Village Panchayat is constituted as local self-Government to undertake welfare measures for the benefit of village people. This is part of decentralization of our administration. The development should benefit the common man living in villages. Administration of the Panchayat is given to the representatives elected by the members of the respective Panchayats in a democratic manner. Electorates have given mandate to the President and the members to continue in office for the full term. By removing the elected representatives on account of the alleged misconduct, the Inspector of Panchayat was practically interfering with the administration of local self-Government. Therefore, action taken under this provision cannot be taken very lightly. It should be taken with all its seriousness. The action of the Inspector of Panchayat should not result in oppression.

10. In a democratic set up, will of the people is supreme. So long as the elected body enjoys the confidence of the people, they should be permitted to continue

in office. Section 205 of the Act gives a supervisory jurisdiction to the District Collector in his capacity as Inspector of Panchayat, over the democratically elected President and Vice President of the Village Panchayat. The statute permits the Inspector to take action on his own motion or at the instance of 2/3rd of the members of the Panchayat. Therefore, such absolute power should be exercised with utmost care and caution and not in a routine or casual manner.

Analysis:

11. The subject action against the Respondent was initiated suo motu. The members of the Panchayat never expressed ''no-confidence'' against the President. As per the scheme of the Act, the District Collector was expected to issue show cause notice to the Panchayat President calling for his explanation. In case the explanation was found satisfactory, no further action is necessary. The proceeding would continue further only in the event of District Collector coming to a prima facie conclusion that the explanation is not satisfactory and that the views of the members of the Panchayat should be obtained.

12. The provision regarding recording the views of the Village Panchayat by convening the Panchayat meeting was made with a specific purpose. Subsections (2) to (10) of Section 205 of the Act clearly gives an indication that due weight should be given to the views expressed by the Village Panchayat. In case the jurisdiction of the Collector is absolute, there is no necessity to ascertain the views of the members of Village Panchayat. They are the best persons to comment about the conduct or misconduct of the President of the Village Panchayat. Section 205(9) of the Act indicates that the Village Panchayat should be given a free hand in the matter of taking action against the President. It is only because of this, Tahsildar, was restrained from speaking on the merits of the notice or the explanation given to the charges. Therefore, the inevitable conclusion is that the Inspector has no authority to remove the President without considering the views expressed by the members of the Panchayat objectively.

13. The expression "considering the views" gives a clear indication that the Inspector of Panchayats has to give due weight to the views expressed by the Panchayat Members. It is true that the Inspector can disagree with the views expressed by the members. However, the decision of the Inspector to overrule the views expressed by the members should be supported by reasons. Given the nature of power exercised by the District Collector in the matter of removal of elected representatives, the consideration of the objection of the Village Panchayat is not an empty formality. The Collector should consider the views with all the seriousness it deserves.

14. The impugned proceedings was initiated suo motu by the Inspector of Panchayats. The members of the Village Panchayat has no grievance against the Respondent. The charges were not so serious. In fact, most of the charges were nothing but procedural violations. Therefore, the Village Panchayat opined that the Respondent should be given an opportunity to correct the alleged procedural

violations. It is a matter of fact that the election of the Respondent was in the year 2006 and the impugned proceedings commenced within one year of assumption of office. It was only in the said circumstances, the Respondent as well as the Village Panchayat expressed that the President being a new face, has no previous experience about the conduct of the Village Panchayat and therefore, he should be given one more opportunity to rectify the mistakes. This was taken as a kind of admission by the Inspector of Panchayat and accordingly, further proceedings were taken.

15. The order passed by the Inspector does not contain reasons much less justifiable reasons to invoke Section 205 of the Act. It is true that the Act gives authority to the Collector to remove the President. That power should be exercised with caution. It was only for the purpose of an objective consideration of the matter, statute made a specific provision to ascertain the views of the members of Village Panchayat. Therefore, any decision taken to ignore the views expressed by the Village Panchayat should be supported by proper reasons. Unfortunately, the order passed by the District Collector does not contain any materials as to why he was not in agreement with the views expressed by the Village Panchayat.

The earlier authorities:

16. The scope and ambit of the powers u/s 205 of the Tamil Nadu Panchayat Act was considered by one of us (D. Murugesan, J.) in V. Subramani v. State of Tamil Nadu, rep. by Secretary to Government, Rural Development, 2001 WLR 617. It was held that the order of the Inspector of Panchayat rejecting the views of the Village Panchayat should be supplemented by reasons.

17. The issue regarding the manner of exercise of power u/s 205 was earlier referred to a Full Bench of this Court. The Full Bench in The District Collector and Inspector of District Panchayat and The District Development Officer Vs. Devi Parasuraman and The Manager, Central Bank of India, Marakkanam Branch, , considered Section 205 of the Act in extenso and observed thus:

15.... 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.

18. In Devi Parasuraman [supra], the Full Bench summarised the views thus:

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.

19. In Tarlochan Dev Sharma Vs. State of Punjab and Others, , the Supreme Court was considering Section 22 of the Punjab Municipal Act, 1991, regarding the removal of the President on the grounds of "abuse of his powers or of habitual failure to perform his duties". The Supreme Court held that proceedings for removal must satisfy the requirements of Natural Justice and the curtailment of statutory term of the holder of office cannot be made in a routine manner. The relevant observation is as under:

7. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his elections set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out.

20. The charge against the Respondent was nothing but "abuse of power". It was not the case of the Inspector of Panchayat that the Respondent wilfully omitted or refused to carry out or disobeyed any of the provisions of the Act or Rule or Bye-law or Regulation or recovery order made or issued under the Tamil Nadu Panchayats Act. Therefore, it was only the alleged abuse of power which made the Inspector to initiate proceedings.

21. The term "abuse of power" was considered by the Supreme Court in Tarlochan Dev Sharma [supra]. The Supreme Court held that the concept implies wilful abuse or an intentional wrong. The Supreme Court said:

11. The expression ''abuse of powers'' in the contest and setting in which it has been used cannot mean use of power, which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse or in intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuses of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President. In as much as a abuse of power would entail adverse Civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is ''abuse of his powers of habitual failure to perform in duties''. The use of plural-powers, and the setting of the expression in the framing as Section 22 is not without significance. It is suggestive of legislative intent. The phrase ''abuse of powers'' must take color from the next following expression - ''or habitual failure to perform duties''. A singular or causal aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is ''abuse of powers'' within the meaning as Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

22. The judgment of the Supreme Court in Tarlochan Dev Sharma was later followed in Sharda Kailash Mittal Vs. State of M.P. and Others, .

23. The ultimate order passed by the Inspector of Panchayat u/s 205 would result in Civil consequences to the affected party. In case the President was removed by the Collector in exercise of his power u/s 205 of the Act, he would be ineligible for election as President until the date on which notice of the next ordinary elections to the Village Panchayat is published, or the expiry of one year from the date specified in such notification as postponed by the order or unless the said order is set aside by the Government. Therefore, the Inspector of Panchayat was expected to consider the matter in an unbiased manner. The Inspector of Panchayat has to evaluate the entire materials, including the views expressed by the members of Panchayat in the light of the particular misconduct alleged against the President. The order should contain reasons which actually prompted the Inspector of Panchayat to take a decision one way or the other. It is all the more necessary in case proceedings were initiated suo motu. If elected members are removed from public office very casually, it would shake the confidence of the common man in the very system and the local self-Government would lose its significance.

24. The Panchayats were constituted by the Constitution [73rd Amendment Act, 1992]. Parts IX and X were inserted with a definite purpose. Parliament in its wisdom wanted to confer power to the people. The States on their part implemented the provisions contained under Parts IX and X either by amending the existing laws or by making new legislations. Therefore, any provision which

seeks to take away the administration from the hands of the elected representatives should be interpreted in a strict manner.

25. The order impugned in the Writ Petition does not contain any indication as to why the Inspector of Panchayat was not inclined to accept the views expressed by the Village Panchayat. The members present at the Village Panchayat unanimously adopted a resolution supporting the Respondent. The Inspector of Panchayat took their views very lightly and ignored it altogether and removed the Panchayat President from office unceremoniously. These aspects were considered by the learned single Judge. We do not find any error or illegality in the order, setting aside the Notification dated 30 April 2010. In the upshot, we dismiss the Writ Appeal. No costs. Consequently, M.P. No. 1/2010 is also dismissed.