
(2015) 02 MAD CK 0113
In the Madras High Court
Case No : W.A. (MD) No. 115 of 2014

V. Sethuraman

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Patents Act, 1970 — Section 77

Tamil Nadu Panchayats Act, 1994 — Section 212(13), 212(3), 212(4), 218, 219

Citation : (2015) 2 LW 328

Hon'ble Judges : T. Mathivanan, J.; A. Selvam, J.

Bench : Division Bench

Advocate : G. Ethirajulu, for the Appellant; K. Chellapandian, A.A.G assisted by N.S. Karthikeyan, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A. Selvam, J.—Challenge in this Writ Appeal is to the order dated 22.01.2014 passed in Writ Petition (MD) No. 11223 of 2013 by the learned Single Judge of this Court.

2. The appellant herein as petitioner has filed Writ Petition (MD) No. 11223 of 2013 under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to G.O.(D) No. 312, Rural Development and Panchayat Raj (PR-4) Department dated 03.07.2013 passed by the first respondent and quash the same and also for directing the first respondent to notify the alleged removal of Chairman of Usilampatti Panchayat Union under Section 212(13) of the Tamil Nadu Panchayats Act, 1994 on the basis of the report dated 28.03.2013 submitted by the third respondent under Section 212(3) of the Tamil Nadu Panchayats Act, 1994.

3. The averments made in the petition are that Usilampatti Panchayat Union consists of 13 Wards and Members have been elected in the election held on 29.10.2011 and one T.R. Palpandi has been elected as Chairman of Usilampatti

Panchayat Union. The Chairman has not cared about the welfare of general public and he acted against them and consequently a representation has been sent to Revenue Divisional Officer, Madurai, third respondent herein, to take necessary action. The third respondent has failed to take any action. On 04.02.2013, another representation has been given to the third respondent, whereby so many charges have been levelled against the Chairman. On 14.02.2013 the third respondent has sent a copy of charges to the Chairman. On receipt of charges, the Chairman has submitted his explanation to the third respondent. On 02.03.2013, the third respondent has issued notice to all Councillors in terms of Section 212(4) of the Tamilnadu Panchayats Act, 1994, wherein it is stated that a meeting is going to be conducted on 28.03.2013 to decide the issue of no confidence motion against the Chairman. After receipt of the said notice, the said Chairman has filed Writ Petition (MD) No. 4681 of 2013 by way of challenging the same and no interim order has been passed in the said Writ Petition. On 28.03.2013, as scheduled, the third respondent has conducted meeting for no confidence motion and all the Councillors including Chairman and Vice Chairman are present in the office of the fourth respondent. The Chairman and one Councillor by name M. Pechiammal have raised their objections for conducting meeting on the ground that Writ Petition filed by Chairman is pending. Since the Chairman has not produced any interim order, the third respondent has conducted the proceedings as per notice and 11 Councillors have raised their hands in support of no confidence motion and on the basis of no confidence motion, the third respondent has submitted a letter to the Principal Secretary, Rural Development and Panchayatraj in Na. Ka. No. 979/2013/B1 dated 27.03.2013 and on the basis of letter dated 27.03.2013 on 10.06.2013, the Principal Secretary, Rural Development and Panchayatraj in R.O.C. No. 979/2013/B1, has called for a report from the third respondent with regard to discrepancies found in the letter dated 27.03.2013 and accordingly, the third respondent has submitted a detailed explanation dated 10.06.2013. On the basis of letter dated 27.03.2013 and explanation dated 10.06.2013, the Principal Secretary to Government, first respondent herein has passed the impugned G.O. (D) No. 312, Rural Development and Panchayat Raj (PR-4) Department dated 03.07.2013 and thereby set aside the entire proceedings of the Revenue Divisional Officer, Usilampatti Division, Madurai District and in order to quash the same and also for directing the first respondent to notify removal of Chairman of Usilampatti Panchayat Union under Section 212(13) of the Tamilnadu Panchayats Act, 1994, the present writ petition has been filed.

4. The learned Single Judge after hearing both sides and upon perusing the relevant records has dismissed the petition.

5. Before excogitating the rival submissions made on either side, it would be apropos to narrate the following admitted facts. It is an admitted fact that Usilampatti Panchayat Union consists of 13 Wards and in the election held on 29.10.2011, Councillors have been elected in all 13 Wards and one T.R. Palpandi has been elected as Chairman of the said Panchayat Union.

6. The main gravamen expressed on the side of the petitioner is that since the Chairman has not cared to look into the interest of general public, after observing due formalities, no confidence motion has been taken and in support of no confidence, 11 members have raised their hands and accordingly, the third respondent viz., Revenue Divisional Officer, Madurai District has submitted a letter dated 27.03.2013 to the first respondent viz., Principal Secretary to Government so as to notify removal of Chairman and since some discrepancies are found place in the letter dated 27.03.2013, explanations have been called for from the third respondent and accordingly befitting explanations have been submitted by the third respondent and subsequently the impugned G.O.(D) No. 312 has been passed, wherein the entire proceedings of the third respondent are set aside.

7. The learned counsel appearing for the appellant/petitioner has contended with great vehemence to the effect that since the Chairman Usilampatti has committed so many irregularities and also not cared the general public, no confidence motion has been brought in, in accordance with the Rules contemplated under the Tamilnadu Panchayats Act, 1994 and in support of no confidence motion, 11 members have raised their hands and the third respondent has immediately submitted a report to the first respondent so as to notify the alleged removal of Chairman and in the letter submitted by the third respondent, some flimsy discrepancies are found place and the same have been properly explained by a letter dated 10.06.2013 and inspite of acceptable explanation offered by the third respondent, the first respondent has erroneously passed the impugned G.O.(D) No. 312 and thereby set aside the entire proceedings of the third respondent under Section 219 of the Tamilnadu Panchayats Act, 1994 and as per Section 212(13), if the motion is carried with the support of not less than four-fifth of the sanctioned strength, the Government is not having any other option except by issuing notification. But in the instant case, the first respondent without following the mandatory provision of Section 212(13) has erroneously passed the impugned G.O. (D) No. 312 and further, as per Section 219 of the said Act, the first respondent has no power to set aside the proceedings of the third respondent and the learned Single Judge has failed to look into the said aspects and therefore, the order passed by the learned Single Judge is liable to be set aside and Writ Petition (MD) No. 11223 of 2013 is liable to be allowed as prayed for.

8. As a repartee to the arguments put forth on the side of the appellant/petitioner, the learned Additional Advocate General appearing for the respondents 1 to 4 has befittingly contended that as per Section 219 of the said Act, the Government is having power of revision either of its own motion or on application. Under the said circumstances, the entire proceedings of the third respondent with regard to removal of Chairman are set aside by way of passing the G.O. (D) No. 312 and the leaned Single Judge after considering the nature of discrepancies found in the letter submitted by the third respondent and subsequent explanation has rightly dismissed Writ Petition (MD) No. 11223 of

2013 and therefore, the order passed by the learned Single Judge does not require any interference.

9. The learned counsel appearing for the fifth respondent viz., the concerned Chairman has contended that in the Writ Petition the fifth respondent has not been impleaded and further the first respondent after considering the vital discrepancies found in the letter submitted by the third respondent and subsequent explanation, has rightly passed the impugned G.O. (D) No. 312 and thereby set aside the entire proceedings of the third respondent. Under the said circumstances no blemish could be attached to the order passed by the learned Single Judge and altogether, the present Writ Petition deserves to be dismissed.

10. On the basis of the submissions made on the side of the appellant/petitioner, the following points have become emerged.

(a) Whether the Government is not having any other option except to accept the letter submitted by the third respondent and notify the alleged removal of fifth respondent herein as per the provision of Section 212(13) of the said Act?

(b) Whether the Government can invoke provision of Section 219 so as to set aside the proceedings of the third respondent by way of passing the impugned G.O. (D) No. 312 dated 03.07.2013?

11. The entire argument put forth on the side of the appellant/petitioner is based upon the provision of Section 212(13) of the Tamilnadu Panchayats Act, 1994 and the same reads as follows:

"If the motion is carried with the support of not less than four-fifth of the sanctioned strength of Panchayat Union council, the Government shall, by notification, remove the [chairman or vice-chairman] of the panchayat union council." 12. A plain reading of the said section would go to show that if no confidence motion is having support of four-fifth of sanctioned strength, the Government has to issue necessary notification so as to remove either Chairman or Vice Chairman of Panchayat Union Council.

13. At this juncture, a nice legal question arises as to whether on the basis of mandatory provision available in the said section, the Government is having revisional power so as to set aside the proceedings of Inspector, District Collector or any officer authorised by Inspector or District Collector under sub-section (2) or (3) of Section 218 of the said Act.

14. The learned Additional Advocate General has solely relied upon the revisional powers of the Government enshrined in Section 219 of the said Act and the same reads as follows:

"The Government may, after consulting the Inspector, Collector or such other officer or authority as they may deem fit, at any time, either suo motu or on application, call for an examine the record of any order passed or proceeding recorded under the provisions of this Act by-

- (a) the Inspector or the Collector or any officer authorised by the Inspector or the Collector under sub-section (2) or (3) of Section 218; or
- (b) any officer authorised by the Government under sub-section (1) of that Section or any officer empowered by them under sub-section (4) of that section; or
- (c) any other authority or officer;

for the purpose of satisfying themselves as the legality or propriety of such order, or as to the regularity of such proceeding and pass such order in reference thereto as they think fit.

15. From a cursory look of the said provision, it is made clear that the Government either in suo motu or on application, under the guise of revision, can very well make interference in respect of legality or propriety of any order or proceeding passed by Inspector, District Collector or any officer authorised by them under sub-section (2) or (3) of Section 218. Therefore, no one can say that Government is not having power to look into legality or propriety of any order or proceeding passed by the Inspector or District Collector or any officer authorized by them under sub-section (2) or (3) of Section 218.

16. In order to buttress the contentions put forth on the side of the appellant/petitioner, the following catena of cases are accited on the side of the appellant/petitioner.

(i) In Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, it is held that "there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out a ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. There is no legal bar to be the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no-confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members." 17. As per the dictum given by the Hon'ble Apex Court it is made clear that in a case of censure motion, ground or charge on which the same has been dropped, must be set out. But in no confidence motion, such things would not arise.

(ii) In Trutuf Safety Glass Industries Vs. Commissioner of Sales Tax, U.P., it is held that "it is settled law that while interpreting the entry for the purpose of taxation recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them.

(iii) In (2008) 3 MLJ 303 (SC) [Smt. Bachchan Devi and another Vs. Nagar Nigam, Gorakhpur and another] it is observed that "where the legislature uses two words "may" and "shall" in two different parts of the same provision, prima facie it would appear that the legislature manifested its intent on to make one

part directory and another mandatory. But that by itself is not decisive. The power of Court to find out whether the provision is directory or mandatory remain unimpaired."

(iv) In *D. Srinivasan Naicker Vs. The Secretary Home (Prisons), Government of Tamil Nadu and The Superintendent of Prison, Madurai Central Jail*--> it is observed that "the object of both the Juvenile Justice Act, 1986 and Juvenile Justice (Care and protection of Children) Act, 2000 was to provide for the care, protection, treatment, development and rehabilitation of juveniles and both the acts being the benevolent legislation, they have to be interpreted in the manner as to advance the object of the Act."

(v) In *Omprakash and Others Vs. Radhacharan and Others*, it is held that "statutory provision on such interpretation would be impermissible in law. Sentiments or sympathy would not be guiding factor in determining rights of parties which are otherwise clear and unambiguous."

(vi) In *Krishna Kumar Birla Vs. Rajendra Singh Lodha and Others*, it is held that "Court cannot construe provisions of statute in a manner which would destroy any purpose for which enactment was made."

(vii) In *Indian Network for People living with HIV/AIDS and Tamil Nadu Networking People with HIV/AIDS Vs. Union of India (UOI) and F. Hoffmann-La Roche AG*, , it is held that "Words and Phrases - "Proceedings" - not defined in the definition clause but shall have the meanings respectively assigned to them in the Act. Shall have the same meaning as the expression "proceedings" occurring in Section 77 of the Patents Act."

(viii) In 2010 (2) Supreme 651 [*Supreme Paper Mills Ltd., Vs. Asst. Commissioner, Commercial Taxes Calcutta and Ors.*] it is held that "interpretation of statutes - It is a well settled principle in law that the court cannot add anything into a statutory provision, which is plain and unambiguous. Language employed in a statute itself determines and indicates the legislative intent. If the language is clear and unambiguous it would not be proper for the court to add any words thereto and evolve some legislative intent not found in the statute."

(ix) In *Bhanumati Vs. State of Uttar Pradesh through its Principal Secretary and Others*, , it is held that "constitution cannot be interpreted to exclude provision of no confidence motion in respect of office of panchayat Chairperson just because of its silence on that aspect."

(x) In *Orissa Public Service Commission and Another Vs. Rupashree Chowdhary and Another*, it is held that "when words of provision are clear, plain or unambiguous and reasonably susceptible to only one meaning, courts are bound to give effect to that meaning irrespective of consequences, for the provision speaks for itself."

(xi) In (2007) 3 MLJ 385 [*K. Balaswami V. Director of Pension, Chennai and another*] it is held that "while the object of the scheme is to give financial

support to the deserving persons, who contributed towards the Health Fund Scheme, naturally it is not open to the authorities to suggest the manner of treatment or to suggest that the treatment should be undergone in a particular hospital alone, which can never be the policy of the Government."

(xii) In *Usha Bharti Vs. State of U.P. and Others*, it is held that "no confidence motion is fundamental to democracy."

(xiii) In 2014 (5) CTC 620 [*TTG Industries Ltd. Vs. Regional Provident Fund Commissioner*] it is held that "mere existence of clerical errors do not vitiate order."

18. From the cumulative reading of the said decisions, it is made clear that a statute must be interpreted as it is and the Court is not empowered to give different meaning. Further, if there is any clerical errors and that too flimsy, would not affect the concerned order.

19. With these legal backdrops, it would be condign to analyze the letter submitted by the third respondent to the first respondent and gravity of discrepancies found therein and also the Order passed by the first respondent.

20. It is an admitted fact that a no confidence motion has been brought against the Chairman of Usilampatti Panchayat Union, fifth respondent herein, wherein 11 members out of 13 have supported no confidence. On the basis of majority in support of no confidence, the third respondent as per law has submitted a letter dated 27.03.2013 to the first respondent, wherein it is mentioned that after receipt of notice, the fifth respondent herein as petitioner has filed WP (MD) No. 4681 of 2013 on the file of this Court, wherein stay has been sought for so as to deter the meeting scheduled to be held on 28.03.2013. On 27.03.2013 itself the petition filed by the Chairman has been rejected in limine.

21. The learned counsel appearing for the appellant/petitioner has contended that the third respondent by oversight has erroneously mentioned in the letter dated 27.03.2013 and subsequently by way of submitting proper explanation it has been abundantly explained. But the first respondent has failed to consider the same.

22. The learned Single Judge has also found that wrong information found in the letter dated 27.03.2013 is really a fatal to the entire proceedings of the third respondent.

23. It is seen from the records that after receipt of the letter dated 27.03.2013 an explanation has been called for from the third respondent. The successor in office has submitted a detailed explanation on 10.06.2013, wherein it is stated that only on the basis of wrong information given by an officer of the third respondent, such things have been mentioned in the letter dated 27.03.2013. In fact, the proceedings in question have been taken only for the purpose of removing the fifth respondent herein from Chairmanship. After getting requisite majority in the council, a primordial duty is cast upon the third respondent to

submit a proper report to the Government and on the basis of its correctness, the Government is bound to issue necessary notification in respect of removal of Chairman or vice Chairman of the Council as per Section 212(13) of the said Act.

24. In the impugned G.O. (D) No. 312, totally three discrepancies are mentioned.

(i) The first and foremost discrepancy is that the third respondent in the letter dated 27.03.2013 has given erroneous particulars with regard to WP (MD) No. 4681 of 2013.

(ii) The second discrepancy is that the Council has failed to examine the charges levelled against the fifth respondent herein.

(iii) The third discrepancy is that the third respondent has mentioned the date as 27.03.2013 instead of 28.03.2013 in the letter submitted to the Government.

25. As per the dictum given by the Hon'ble Apex Court, if any no confidence motion is brought charges against particular authority, need not be looked into and if there is any censure motion, the same should be considered and further, instead of putting 28.03.2013, the third respondent has erroneously mentioned as 27.03.2013 in the letter submitted to the Government. It is nothing but a venial mistake.

26. Considering the dictum of the Hon'ble Apex Court and also considering the fact that clerical error can be eschewed, the second and third discrepancies mentioned in G.O.(D) No. 312 are not assuming much importance.

27. The learned Single Judge has given much weight to the first discrepancy mentioned in G.O. (D) No. 312.

28. It has already been pointed out that no confidence motion has been brought in by the Councillors of Usilampatti Panchayat Union with a view to remove the fifth respondent herein from Chairmanship. After receipt of notice, the fifth respondent has rushed to this Court and filed WP No. 4681 of 2013, wherein a stay petition has also been filed so as to stay the meeting scheduled to be held on 28.03.2013.

29. It is an admitted fact that WP (MD) No. 4681 of 2013 and stay petition are still pending. But in the letter submitted by the third respondent to the Government it has been recklessly stated to the effect that the petition filed by the fifth respondent herein has been dismissed in limine. As pointed out in many places, no confidence motion has been brought in for the purpose of removing the fifth respondent herein and in order to deter the meeting to be held on 28.03.2013, WP (MD) No. 4681 of 2013 has been filed on the file of this Court and the same has not been disposed of. But the third respondent even without verifying concerned records on the basis of erroneous information given by an officer of the third respondent has recklessly mentioned in the letter as if the Writ Petition is dismissed in limine. Therefore, the third respondent has adopted desultory and insouciant attitude in submitting a letter to the Government. To

put it in short, the third respondent has submitted the letter dated 27.03.2013 by way of mentioning false particulars with regard to WP (MD) No. 4681 of 2013. Under the said circumstances, the first discrepancy mentioned in G.O. (D) No. 312 assumes much importance.

30. The entire argument advanced on the side of the appellant/petitioner is based upon the word "shall" found in Section 212(13) of the said Act. It is true that in the said section the word "shall" is used. But at the same time, the Court cannot belittle the provision of Section 219 of the said Act. As per the provision of Section 219, the Government is having undeterred power to take suo motu action with regard to legality or propriety of the order or any proceeding passed or submitted by the Inspector, District Collector or any other authorised officer.

31. The learned counsel appearing for the appellant/petitioner has repeatedly contended that since no confidence motion has had requisite support as per word "shall" mentioned in Section 212(13), the Government is not having any other option except to issue notification for removal of Chairman or Vice Chairman of the Council. It is mentioned in so many places that the word "shall" mentioned in the said section denotes mandatory. But at the same time, the Court cannot come to a conclusion that the Government is not having power to look into legality or propriety of the proceedings made in respect of no confidence motion, in view of section 219 of the said Act. To put it in short, the Government cannot act as a mute spectator nor observe complete obmutescence. Therefore, this Court is of the considered view that by way of invoking the provision of Section 219 of the said Act, the Government is having undeterred power to look into legality or propriety of the proceedings submitted by the third respondent.

32. It is mentioned earlier that the third respondent even without looking into the correctness of the information furnished by his officer with regard to status of WP (MD) No. 4681 of 2013, for the reasons best known to him, has submitted the so-called letter dated 27.03.2013 to the Government. Therefore, it is quite clear that on the basis of first discrepancy mentioned in G.O. (D) No. 312 this Court is of the view that the same is not liable to be quashed.

33. The learned Single Judge after considering the factual background of the present proceedings and also gravity of mistakes committed by the third respondent has rightly dismissed the petition. In view of the foregoing narration of both factual and legal premise, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/petitioner and in fact the contentions put forth on the side of the appellant/petitioner have not impinged the detailed order passed by the learned Single Judge.

34. In fine, this Writ Appeal is dismissed without cost. Connected Miscellaneous Petitions are also dismissed. The order passed in Writ Petition (MD) No. 11223 of 2013 by the learned Single Judge of this Court is confirmed.