

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-12-2004

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 38599 of 2004
and
W.P.M.P. No. 46134 of 2004
-o-

K. Gopal .. Petitioner

Versus

1. The District Collector
Dharmapuri District
Dharmapuri
2. The Assistant Director of
Rural Development (Audit)
Dharmapuri
3. The Tahsildar
Pappireddypatti Taluk
Dharmapuri District
4. The Deputy Block Development
Officer
Pappireddypatti Panchayat Union
Dharmapuri District

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. K. Sakthivel
For Respondents : Mr. P.S. Jayakumar, Government
Advocate

ORDER

Mr. P.S. Jayakumar, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner has filed the above writ petition praying for a Writ of Certiorari to call for the records relating to the proceedings of the first respondent in No. Na. Ka. 3795/2004/A1 dated 09-12-2004 and quash the same.

3. The facts leading to the filing of the writ petition is that the petitioner is an elected President of Pappireddypatti Village Panchayat; that a special audit of the said Panchayat was conducted by the second respondent for the year 2003-2004 and based on the audit report, the first respondent issued a notice under Section 205 of the Tamil Nadu Panchayats Act, 1994 (hereinafter called as the Act) calling upon the petitioner to submit his explanation by notice dated 01-09-2004 and copies of the audit report also served on the petitioner; that the petitioner has sent his explanation dated 14-09-2004 to the first respondent. Not satisfied with the explanation, the first respondent issued the impugned communication dated 09-12-2004 under Sec. 205 (3) of the Act directing the Tahsildar to convene a meeting for consideration of the notice and explanation, if any and the proposal for the removal of the petitioner, at the office of the Village Panchayat at a time appointed by the Tahsildar.

4. The learned counsel appearing for the petitioner submits that the audit was conducted invoking Rule 2 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 which contemplates that the auditor, who is empowered to issue surcharge certificate after giving show cause notice to the person concerned and then the Collector takes execution proceedings on behalf of a village panchayat and recover, but it was not done. The other argument of the learned counsel is if any loss or waste or misapplication by the president, a suit can be filed against him under Section 234 of the Act. Without proceeding with the above said two specific provisions of Law, the first respondent has initiated action under Section 205 of the Act, which according to the counsel is invalid. In support of his contention, the learned counsel relied on the Judgment reported in Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth and others - (1984) 4 Supreme Court Cases 27.

5. No argument was advanced by the learned counsel for the petitioner with respect to non-compliance or violation of the provisions of Section 205 of the Act by the respondents.

6. Rule 2 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 runs as follows:-

Surcharge and disallowance - (1) Any auditor, empowered by the Government, shall carefully and personally examine every case of loss or waste or misapplication of money or property of the Village Panchayat or Panchayat Union or district Panchayat and may disallow every item contrary to law and surcharge the same on the person making or authorising the making of illegal payments and may charge against any person reasonable therefor, the amount of any deficiency, loss

or unprofitable outlay incurred by the negligence or misconduct of that person or of any sum, which ought to have been, but is not, brought to account by that person and shall, in every such cases, certify the amount due from such person.

7. Rule 2 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 contemplates that any auditor, empowered by the Government, shall carefully and personally examine every case of loss or waste of misapplication of money or property of the Village Panchayat or Panchayat Union or district Panchayat and may disallow every item contrary to law and surcharge the same on the person making or authorising the making of illegal payments and may charge against any person reasonable therefor, the amount of any deficiency, loss or unprofitable outlay incurred by the negligence or misconduct of that person or of any sum, which ought to have been, but is not, brought to account by that person and shall, in every such cases, certify the amount due from such person

8. Rule 4 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 runs as follows:-

4. Issue of surcharge certificate :-

(1) The auditor, who is empowered to issue a surcharge certificate, before issuing a surcharge certificate, shall give a show cause notice to the person concerned, calling upon him to state his defence about the proposed notice in writing within a specified time which shall not be less than fifteen days. If such person desires to be heard in person, the opportunity of personal hearing shall be given by the auditor. In such personal hearing, the auditor shall record the proceedings of such hearing. The auditor shall issue surcharge certificate after taking into consideration the representation, if any, given by the person concerned and the proceedings by the person hearing. The show cause notice and the surcharge certificate shall be in Tamil version.

(2) Wherever the Collector, the Inspector or other competent authority takes execution proceedings on behalf of a village panchayat, panchayat union council or district panchayat in respect of which a surcharge certificate has been issued by an auditor, the expenditure for such purpose shall be met from the Government initially and recovered from the funds of the

respective village panchayat, panchayat union or district panchayat.

9. The auditor, who is empowered to issue surcharge certificate and follow up execution proceedings is contemplated under Rule 4 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000.

10. Section 234 of the Act contemplates thus:-

"234. Liability of the President, Executive authority and members., etc., for loss, waste or misapplication of property.-

(1) The president, executive authority and every member of a village panchayat and the chairman, commissioner and every member of a panchayat union council and the chairman (secretary) and every member of a district panchayat shall be liable for the loss, waste or misapplication of any money or other property owned by or vested in the village panchayat or panchayat union council or the district panchayat if such loss, waste or misapplication is a direct consequence of his neglect or misconduct; and a suit for compensation may be instituted against him in any court of competent jurisdiction by the panchayat or panchayat union council or the district panchayat with the previous sanction of the Inspector

(2) Every such suit shall be commenced within three years after the date on which the cause of action arose.

11. Section 234 of the Act fixes up the liability of President, Executive authority, every member of the Village Panchayat, Chairman, Commissioner etc., and they are liable for the loss, waste or misapplication of any money or other property owned by or vested in the village panchayat or panchayat union or district panchayat if such loss, waste or misapplication is a direct consequence of his neglect or misconduct; and a suit for compensation be instituted against him with the previous sanction of the inspector within a period of three years after the date on which the cause of action arose.

12. A reading of Section 234 of the Act and the relevant provisions relating to The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 make it clear that the compensation can be recovered by instituting a suit and surcharge proceedings to be instituted respectively. The said provisions are totally different from the provisions of sub-section (1) of Section 205 of the Act. This provision empowers

the inspector namely the District Collector either on 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 and if the Inspector is satisfied that the President wilfully omits or refuses to carry out or disobeys any provision of this Act, or any rule, by-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. Sub-section (2) of Section 205 of the Act empowers the inspector to drop charges, if the explanation is satisfactory otherwise he shall forward it to the Tahsildar of the Taluk copy of the notice referred to in sub-section (1) of Section 205 of the Act and the explanation of the President, within a specified date with a proposal for the removal of the President for ascertaining the views of the village Panchayat. Sub-section (3) of Section 205 of the Act contemplates that the Tahsildar shall convene a meeting for the consideration of notice and explanation for the removal of the president.

13. Section 205 of the Act is an independent provision empowers the inspector to initiate action for removal of the village President. Admittedly, the petitioner has not canvassed non-compliance or violation of Section 205 of the Act by the first respondent. As mentioned above, the learned counsel advanced argument that the Collector chosen to initiate action under Sec. 205 of the Act, instead of Section 234 of the Act or Section 4 of The Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, such action is not valid. The said argument is apparently unsustainable in law when three modes of action is contemplated. Two modes are pertaining to surcharge and filing of suit and the remaining one is under Section 205 of the Act for removal of the President for wilful omission or commission or abuse of powers. The said provision is incorporated by the legislature with the intention to prevent further such illegal action by the Village President. The rights and privileges of the President flows from the statutory provision and he cannot claim any right which was not secured by him under the enactment. In this case, the inspector/Collector has rightly exercised his power under Section 205 of the Act. The Judgment relied on by the counsel for the petitioner mentioned supra is not applicable to the facts and circumstance of the case.

14. In the result, the writ petition is liable to be dismissed and accordingly dismissed. No costs. Connected WPMP is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The District Collector
Dharmapuri District
Dharmapuri
2. The Assistant Director of
Rural Development (Audit)
Dharmapuri
3. The Tahsildar
Pappireddypatti Taluk
Dharmapuri District
4. The Deputy Block Development
Officer
Pappireddypatti Panchayat Union
Dharmapuri District

1 cc to Govt. Pleader, SR. 57925

1 cc to Mr. K. Sakthivel, Advocate, SR. 58272

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GM (CO)

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