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K. Ramalingam Vs The Secretary to Government, Department of Local Administration and The Inspector of Panchayat/The District Collector

Writ Petition No. 13084 of 2009 and M.P. No''s. 1 to 3 of 2009

Court: Madras High Court

Date of Decision: Nov. 18, 2009

Acts Referred:
Constitution of India, 1950 â€" Article 226#Tamil Nadu Panchayats Act, 1994 â€" Section 205, 205(11), 205(12), 205(2)

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: R. Thiagarajan for R.N. Amarnath, for the Appellant; P. Wilson, A.A.G. Assisted by N. Senthil Kumar, A.G.P., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.
The Writ Petitioner K. Ramalingam was elected as President of Eraiyur Village Panchayat in Nallur Block of Cuddalore

District on 29.07.2008. The Assistant Director of Panchayat of Cuddalore District carried out an inspection of the Eraiyur Village Panchayat

office, through his inspection the Assistant Director (Panchayat) has found out certain incriminating documents indicating the expenditure incurred

by the village panchayat in various items were found in excess than the permissible limit, even that amount was also spent without obtaining prior

permission from the appropriate authorities. Therefore, the Inspector of Panchayat, the Collector had issued a show cause notice dated

03.09.2008 as to why action should not be initiated against him u/s 205(i)(b) of the Tamil Nadu Panchayat Act herein after called ""the Act"" for the

lapse pointed out therein.

2. The petitioner also submitted his reply to the said notice in his explanation dated 12.09.2008, wherein the petitioner has admitted that he has

spent only for the village. But, in spite of admitting the excess amount the president has requested the Collector to treat the excess spent as a

special case as he has spent them only for the people in ignorance of the existing G.O. for getting prior approval from the higher officers.

3. One of the charges in the show cause notice was that the Government notice G.O.Ms. No. 63, dated 29.06.2006 have stipulated certain norms

and procedures for maintenance of power pumps.

4. The said G.O. States that the maximum amount for one power pump should not exceed Rs. 7,500/-, but in the present case the president has

exceeded more than the amount mentioned in the G.O. Again the show cause notice indicated that the G.O.Ms. No. 84, dated 05.05.1988 the

Village President can incur the expenditure for the maintenance of power pumps as such to the following condition mentioned therein. One such

condition is that there is no need to get approval of the purchase committee and that the Village Panchayat President should call for local quotation

before going for meeting the maintenance expenses. Again, the same was also not done. Wherever the limit mentioned in the G.O exceeds the

permissible limit, the counter signature of the Assistant Engineer should be obtained. Yet again, the same also has not been followed. Further it was

alleged that the president has also misused his powers by purchasing an Ambulance Van when there is no provision for purchasing an ambulance

for Panchayat for spending a sum of Rs. 41,000/- for which also no permission has been ever sought from the superior officers.

5. After the receipt of the explanation, the Collector has not satisfied with the reasoning given by the president. Therefore, the Collector the second

respondent herein sent a letter to the Tahsildar on 30.12.2008 to convene a meeting in the Village Panchayat u/s 205(2) of the Tamil Nadu

Panchayat Act 1994. Accordingly, on 19.01.2009 the Tahsildar held a meeting in the Village Panchayat to find out the views of the members of

Panchayat. Wherein all the members of the Panchayat assembled in which they passed a resolution not to remove the President of their village and

the minutes of the said meeting was duly forwarded by the Tahsildar to the District Collector.

6. Thereafter, on 01.06.2009 the District Collector, Cuddalore passed the impugned order removing the Village Panchayat President from the

office of Village Panchayat and thereafter the proceedings passed by the District Collector removing the Village Panchayat President was also

published in a Gazette Publication on 01.07.2009. Subsequently, the Gazette Publication dated 01.07.2009 was served upon the Village

Panchayat President K.Ramalingam on 03.07.2009. Aggrieved, by the order passed by the District Collector removing the petitioner from the

office of the Village Panchayat President, the writ petitioner has come before this Court challenging the impugned order interalia among leaving

other grounds that the order removing the President of Village Panchayat is against the principles of natural justice. It was contended that since the

show cause notice asking explanation has not been enclosed with a copy of the inspection report said to have been given by the Assistant Director

of the Panchayat, the same is violation of the principle of natural justice. Secondly, it was further contended that the allegations mentioned in the

show cause notice are only on admitted expenditures incurred by the President only towards the improvement and betterment of the village by

giving certain basic amenities to the villagers, therefore, the same cannot be treated as embezzlement of village fund.

7. Again it was contended that in the meeting of the members of the Village Panchayat, all of them expressed their views not to proceed against the

President and not to remove him from the office of President and in democratic set up, the District Collector should have accepted the unanimous

views of the Village Panchayat members. Ignoring such an unanimous views of all the members of the Panchayat and against the provisions of the

Tamil Nadu Panchayat Act, the impugned order of removal has been passed.

8. One of the important contention raised by the Senior Counsel appearing for the petitioner is that the District Collect after receiving the report

from the Tahsildar, without applying his mind, has merely reproduced the reasoning given by the Tahsildar in his report. Therefore, the inspector of

Panchayat who is bound to take an independent decision properly on the charges leveled against the petitioner as well as explanations given by

him, has committed a serious mistake in passing the impugned order without an application of his mind and on these basis the learned senior

counsel pleaded for setting aside the impugned order.

9. In reply, the Additional Advocate General, Mr. P. Wilson, has submitted that the present writ petition is not maintainable when a remedy u/s

205(12) of the act is provided to challenge the very same impugned order

(i) Further urged that this Court in umpteen number of cases has held that when there is an alternative remedy available to the petitioner to

challenge the notification the writ petitions is not maintainable;

(ii) Again urged that the petitioner being a president of the Village Panchayat has caused a huge financial loss to the village by indiscriminately

misusing the Panchayat fund by purchasing Ambulance Van and also spending huge money in the name of repairing the hand pumps, fixing tube

light to the street lights without following the conditions laid down in G.O.63 dated 29.06.2006 without calling for local quotations;

(iii) It was contended that in all the six charges the Panchayat Board President was admittedly charged in spending excess of money without taking

prior approval from the Assistant Director and the counter signature from the Assistant Engineer while exceeding the permitted limit. While

admitting the serious lapses, the president has only requested the District Collector to treat his lapses as a special case as he has spent for both

betterment of the villagers. But, the District Collector in view of the G.O. mentioned above having seen that the financial irregularities being huge

amount disagreed to treat it as a special case. As there is no provision in the G.O. to do so and without any option the Panchayat Inspector-the

District Collector has finally passed the order removing the President for his own admitted charges. Therefore no leniency can be shown to the

Village Panchayat President who has not acted in terms of the G.O. issued by the Government in the matter of expenditure of the public fund;

(iv) It was further contended that the views of the Village Panchayat members are not mandatory in nature because the Inspector of Panchayat is

not bound to act on the views of the members of the Panchayat and since he has got discretionary power to over look the views of the Panchayat,

by rightly doing so, the District Collector has come to a independent conclusion on the charges made against the petitioner by passing the order of

removal, therefore absolutely there is no violation of the principle of natural justice as alleged by the petitioner. On these basis, the learned

Additional Advocate General prayed this Court to dismiss the writ petition as there is no merits in the impugned order.

10. Heard the counsel on both sides.

11. The learned Senior Counsel Mr. R. Thiagarajan appearing for the petitioner has submitted that in a democratic system governed by rule of law,

once the Village Panchayat President is elected to an office then the incumbent is entitled to hold the office for a full term for which he has been

elected unless his election is set aside.

12. The Panchayat President cannot be removed from the office unless there has been a stint of the provisions of Section 205 of the Tamil Nadu

Panchayat Act 1994. But, in the present case without supplying the necessary documents to give a detailed enquiry, the District Collector has

passed the impugned order by stating that the petitioner has committed the offence of abuse of power, in respect of spending the Panchayat fund,

particularly when the charges specifically state that he has spent it only for the villagers. The excess amount spent beyond the limit under any such

imagination, can be termed as embezzlement of public fund. Further in the show cause notice, on what date the Additional Director of Panchayat

has inspected the Panchayat Office and how much money has been mishandled were properly not furnished. Further the allegation of purchase of

Ambulance van also was mentioned for removal, whereas the president after purchase of Ambulance Van the same was returned and sum of Rs.

41,000/- was repaid into the account of Village Panchayat on 12.05.2008 which is much before the issuance of show cause notice. Therefore the

impugned order passed by the District Collector indicates total non application of mind on the charges levelled against the petitioner on these basis,

the learned senior counsel prayed for setting aside the impugned order and the president should be allowed to function till he completes the full

tenure, as he is one of the honest President of the Village Panchayat, particularly when all the members of the Panchayat have unanimously passed

a resolution in the presence of the Tahsildar expressing their unanimous views not to remove him from the post of President. The counsel further

relied upon a Judgment reported in 2001 WLR 617 (V. Subramani v. State of Tamil Nadu and Ors.) wherein this Court has held that if there is an

unanimous view of the members of the Village Panchayat Counsel not to remove the President from his office the District Collector ought to have

accepted the views of the Village Panchayat as per the minutes of the meeting recorded u/s 205 of the Act. When the minutes specifically referred

to the fact that the Village Panchayat was not in favour of the removing the petitioner from the office of the President any contrary view will not

justify the District Collector to pass the impugned order removing the petitioner from the office of the President.

13. In support of his submission, a judgment of this Court reported in 2001 WLR 617 (cited supra) has been relied on. Some of the extracts of the

judgment are given below:

Going by the Scheme of the Act, it is very clear that when the Inspector of Panchayat is conferred with a power of removal of the President, it

should not be exercised arbitrarily and without application of mind to the facts of the case. In order to safeguard the interest of elected

representatives from arbitrary removal, the legislatures have thought to impose the stringent procedures to be adopted by the Inspector of

Panchayat before such an order of removal is passed. In fact the Inspector of Panchayat may on his own or on a representation in writing signed

by not less than two-thirds of sanctioned strength of the village panchayat, containing the charges against the President and presented the same by

any two members of he village panchayat, has to forward the complainant to the President for explanation. In the event, the Inspector of Panchayat

is not satisfied with the explanation offered by the petitioner, he has to forward the notice and explanation to the Tahsildar of the Village Pachayat

calling upon him to convene a meeting of the members of the village Panchayat and to forward the views of the said village Panchayat for taking

further action. Therefore, unless and until the procedures contemplated u/s 205(2) to (10) a strictly complied with the Inspector of Panchayat

cannot resolve to remove the petitioner from the office of the President by virtue of the provisions u/s 205(11) of the Act. Admittedly, the

Inspector of Panchayat namely the 2nd respondent after receiving the complaint even though not presented to him in conformity with Section

205(1)(b) of the Act by two-thirds sanctioned strength of the Village Panchayat presented in person to the Inspector by two of the members of the

village Panchayat, had resorted to forward the complaint of the Vice President and villagers calling for an explanation from the President u/s 205(1)

(b) of the Act and after receiving the explanation and having not satisfied with the same, he had also forwarded a copy of the notice issued to the

President under Sub-section (1) of the Section 205 and the explanation of the President received with a proposal for removal of President to the

Tahisldar u/s 205(2) of the Act for ascertaining the views of the village panchayat. Pursuant to that the village panchayat expressed their views

against the removal as communicated by the Tahsildar in his letter dated 15.10.1999. Therefore, when the views of the village panchayat were

made available to the 2nd respondent, the 2nd respondent ought not to have taken a different view than the one taken by the village panchayat. OF

course u/s 205(11) of the Act, the Inspector has got a discretion either to remove the President from the office by notification with effect from a

date specified therein or drop further action after considering the views of the village panchayat. Such a discretion cannot be arbitrarily exercised

by the Inspector of Panchayat. It is to be borne in mind that there are no two views expressed by the members of the village panchayat one for

removal and another for not removing the president. The unanimous view of the village panchayat is not to remove the petitioner from the office of

the President. Therefore, there cannot be a further discretion exercised by the Inspector of Panchayat for rejecting the only view of the members of

the village panchayat.

14. In this context Mr. R. Thiagarajan, brought to my notice a full bench judgment of this Court reported in 2009 (4) CTC 609 (The District

Collector and Inspector of District Panchayat v. Devi Parasuraman) to say that when the inspector differs with the views expressed by the

Panchayat and decides to remove the President or to drop proceedings against the president he is not only required to record the reasons for

differing with 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.

15. On the other hand, the learned Additional Advocate General Mr. P. Wilson in a effort to counter the above said judgment in reply cited two

judgments given by learned single judge of this Court to say as to how to consider the views of the members of the Village Panchayat. In a

judgment reported in M. Samayamuthu Vs. The Secretary to the Government, Government of Tamil Nadu, Local Authorities and Water Supply,

The Inspector of Panchayats and the District Collector, The Block Development Officer, (Village Panchayat) and The Tahsildar, it is held as

follows:

Under Section 205 of the Act, if the President is accused of specific misconduct, a show cause notice is given to him, explanation is called for from

him, the District Collector after perusing the connected materials, has to form an opinion. He has to convene a meeting for Panchayat members to

ascertain their views (which obviously he is not bound to accept) and u/s 205(11) of the Act, in his discretion, he can remove the President from

the office by a Notification or he can also drop further action.

16. In an unreported judgment in W.P. No. 11387/2009 dated 08.09.2009 this Court while dealing with a similar issue has held thus:

(vi) Inspector of Panchayat is not bound to act on the views of the members of the village panchayat and has got discretionary power to overlook

the views of the panchayat and come to an independent conclusion about the charges made against the petitioner which he has done it as per

Section 205(11) of the Act.

17. Mr. P. Wilson, learned Additional Advocate General further urged that the petitioner by coming straight away to this Court by invoking Article

226 of the Constitution of India has excluded an effective remedy available u/s 205(11). Another argument was also advanced by the learned

senior counsel appearing for the petitioner stating that when there is a violation of principle of natural justice in removing the President of the Village

Panchayat from his office, as against the unanimous view of the members of the village panchayat the existence of alternative remedy is not a Bar to

invoke Article 226 Constitution of India as held by this Court 2006 3 MLJ 537 (J. Maria Selvam v. Govt. of Tamil Nadu and Anr.).

18. No doubt in the instant case, the President of Village President Mr. Ramalingam has been given a show cause notice to explain why he should

not be removed from the office of the President on the alleged misappropriation and other violation of G.Os. in handling public fund of the village.

It is an admitted fact that the petitioner Ramalingam while giving his explanation to the show cause notice he has admitted almost all the charges in

spending money only for the welfare of the village. No doubt the explanation admitting the charge cannot be denied while doing so the President

has again admitted the above facts of spending money beyond the specified limit mentioned in the G.O.Ms. No. 63 dated 29.06.2006 as well as

G.O.Ms. No. 84 dated 05.05.1988. While giving his explanation he has requested the District Collector to treat all the lapses as a special case.

Since, he has spent only for the welfare of the people. These admissions made by him in his explanation certainly leaves no option for this Court, to

accept the impugned order as correct.

19. However, in spite of the legal issues decided by a full bench of this Court reported in 2009 (4) CTC 609 (cited supra) stating that in the event

of the Collector differing with the views expressed by the village panchayat and decides to remove the President, it is not only required to record

the reasons for differing from the views expressed by the village panchayat but before taking any decision to remove the President, the Inspector of

Panchayat is also required to provide further notice to the President of the Panchayat intimating the reasons for difference and can issue notification

only on consideration of cause, if any, shown by the President. The relevant para No. 17 of the full bench judgment is extracted here in below for

easy reference:

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

(i) 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

proceedings; and

(ii) If the Inspector differs with the views expressed by the Village Panchayat and decides to remove the President or to drop the proceedings

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.

20. Since this Court is bound by the judgment of the full bench of this Court mentioned above, in view of unanimous views expressed by all

members of Village Panchayat not to remove the President the petitioner herein from the office of President of the village, I am of the view that the

District Collector should have provided further notice to the President intimating reasons for difference and thereafter should have issued

notification only upon consideration of the cause, if any shown by the President. Since the same has not been done in this case, the impugned order

dated 01.06.2006 is set aside by directing the Collector to provide notice to the President intimating the reasons for taking a different view by him

and thereafter the Collector can proceed upon consideration of cause, if any, shown by the President. Consequently, Connected M.P. Nos. 1 & 2

of 2009 are closed and M.P. No. 3 of 2009 raising additional ground is allowed. However there is no order as to costs.