

(2009) 04 MAD CK 0508

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 7131 of 2008

A. Tamil Selvan

APPELLANT

Vs

State of Tamil Nadu, The District
Collector, The Block
Development Officer and The
Commissioner

RESPONDENT

Date of Decision: April 17, 2009

Acts Referred:

- Constitution of India, 1950 - Article 243B, 40
- Tamil Nadu Panchayats Act, 1994 - Section 52, 52(2), 85, 85(4), 85(5)

Citation: (2009) 6 CTC 787

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: T. Lajapathi Roy, for the Appellant; R. Anitha, Additional Government Pleader, for the Respondent

Judgement

K.K. Sasidharan, J.

The Petitioner is the Chairman of Kalakkad Block Panchayat Union in Tirunelveli District. The Petitioner was elected as the Chairman of the Panchayat Union, Kalakkad in the year 2006 and he has been discharging his function as the Chairman for the welfare of the people of the said Panchayat Union. The grievance of the Petitioner was on account of the failure of the Respondents 3 and 4 to produce the communication received from the Government as well as the proposals received from the Government for the project to be executed in the Panchayat Union, to his knowledge. According to the Petitioner, the Respondents 3 and 4 never consult him while implementing the developmental projects of the Panchayat Union and they were preventing him from exercising the powers as the Chairman of the Panchayat. In such circumstances, the Petitioner made a representation to the Respondents 1 and 2 to consider his grievances. However, no follow-up action was taken by the

Respondents 1 and 2 and as such, the Petitioner has prayed for appropriate action against Respondents 3 and 4 in accordance with the provisions of the Tamil Nadu Panchayats Act, 1994.

2. The Fourth Respondent has filed a counter-affidavit, wherein it was stated that the Chairman has got full access to all the records of the Panchayat Union and no official correspondence between the Council and the Government should be transmitted except through the Chairman. However, the Petitioner has been insisting that any correspondence either by the Third Respondent or by the office of the Fourth Respondent to the Government and vice versa should be transmitted only through him. According to the Fourth Respondent, there was no provision in the Panchayats Act, which mandates that such correspondence should be transmitted only through the Chairman. The Fourth Respondent also contended that the Petitioner and the Third Respondent were not in good terms and the Second Respondent conducted a joint meeting on 03.03.2008 to resolve the dispute and a decision was taken in the said meeting that both the Petitioner and the Third Respondent should co-operate in the conduct of the administration of the Panchayat.

3. The Petitioner is the Chairman of a Panchayat Council and the powers of the Chairman is provided in Section 52(2) of the Tamil Nadu Panchayats Act, 1994.

4. The constitution of the three tier system of the Panchayat was made on account of the Constitution (73rd Amendment) Act, 1992, which inserted Part-IX of the Constitution in the present form. Article 40 of the Constitution mandates the States to organise Village Panchayats and to endow them with such powers and authority as may be necessary to enable them to function as units of self-Government. It was with such a good intention, Part-DC of the Constitution was inserted by way of the 73rd Amendment Act, 1992. The insertion of Part-IX to the Constitution effected a sea change in the Panchayat administration. The Panchayats have become local self-Government with a fixed tenure. Provisions were also made for election of members of Panchayat directly by the people of the Panchayat, devolution of powers and responsibilities, management of finance and all other requirements for an effective functioning of the local self-Government. The Constitution of a Village Panchayat in a three tier system was evolved with a view to give participation to the villagers in the administration of their respective Panchayats.

5. The creation of Panchayat Council, as provided by the Tamil Nadu Panchayats Act, 1994 was only on account of the mandate given by Article 243-B of the Constitution. The Preamble to the Tamil Nadu Act 21/1994 clearly shows that the Act was intended to give greater participation of the people so as to make them institutions of self-Government and for more effective implementation of rural developmental programmes.

6. The Chairman occupies a pivotal position in the Panchayat union. He is an elected member accountable to the Council and ultimately, to the village people. The function of the Commissioner and other authorities are also provided in the Panchayats Act. So far as the Panchayat Union is concerned, the Council is the supreme authority and the Chairman represents the collective wisdom of the Council. The Chairman is elected by the members of the Council in a democratic manner. The scheme of the Panchayats Act clearly shows the supremacy of the Chairman.

7. Section 52 of the Tamil Nadu Panchayats Act, 1994 deals with the functions and powers of the Chairman and it would read thus:

52. Functions of the chairman.-- (1) The Chairman shall--

(a) convene the meetings of the Panchayat union council, and

(b) discharge all the duties specifically imposed and exercise all the powers conferred on the chairman by this Act and the Rules made thereunder.

(2) The chairman shall have full access to all the records of the Panchayat union council and no official correspondence between the council and the Government shall be conducted except through the chairman. The chairman shall be bound to transmit communications addressed through him by the Commissioner to the Government or by the Government to the Commissioner.

8. The provision clearly shows that the Chairman shall have the access to all the records of the Panchayat Union and the entire official correspondence between the Council and the Government should be routed only through the Chairman.

9. The Commissioner for a Municipality is appointed as per Section 85 of the Tamil Nadu Panchayats Act, 1994. The said provision enumerates the duty and power of the Commissioner. As per Section 85(4) of the Tamil Nadu Panchayats Act, 1994, the Commissioner is bound to carry out the resolutions of the Panchayat Council and he is also expected to furnish to the Panchayat Union Council such periodical reports regarding the progress made in carrying out the resolutions of the Panchayat union. It is true that the Commissioner is entitled to exercise the executive power for the purpose of carrying out the provisions of the Panchayats Act and he is directly responsible for the due fulfilment of the purposes of the Act.

10. The supremacy of the Council has also been indicated in Section 85(5) of the Tamil Nadu Panchayats Act, 1994, which provides that notwithstanding anything contained in any other provisions of the Act, the Panchayat Union Council shall have power to issue such specific directions as it may think fit regarding the performance by the Commissioner of any of the functions assigned to him under the Act. Section 99 of the Panchayats Act also is an indication of the supremacy of the Council. As per Section 99(2), the report to be submitted to the District Panchayat about the administration of the Panchayat Union for each year has to be prepared by the

Commissioner and it has to be submitted to the Panchayat Council for its approval.

11. The various provisions contained in the Panchayats Act clearly shows the authority of the Panchayat Council in the matter of Panchayat administration. The Chairman has been elected for the purpose of the administration of the Panchayat. The Chairman is entitled to hold the office till he enjoys the majority of the Council. Therefore, during his functioning as the Chairman, the Petitioner is entitled to have access to all the records of the Panchayat Union.

12. The Fourth Respondent has admitted in his Counter-Affidavit that no official correspondence between the Council and the Government would be forwarded except through the Chairman. When Section 52(2) of the Tamil Nadu Panchayats Act, 1994 clearly shows that no official correspondence between the Council and the Government shall be conducted except through the Chairman, the Fourth Respondent cannot be heard to say that he is entitled to communicate with the Government without the intervention of the Chairman. The Fourth Respondent was only exercising the powers of the Commissioner within the meaning of Section 85 of the Panchayats Act and when his very power is prescribed by the provisions of the Act, he is expected to function within the four corners of the statute.

13. The Petitioner and the Respondents 3 and 4 are functionaries of the Panchayat. Their motive and intention should be to serve the people of the Panchayat. Parliament has amended the Constitution and inserted Part-IX by way of Constitution (73rd Amendment) Act, 1992 only with a view to make the institutions of self-Government more effective. Unless the villages are made self-sufficient, it would be impossible for the nation to develop. In case the functionaries, like the Petitioner and the Respondents 3 and 4 themselves fight in the name of their office as well as their rights, it really projects a sorry state of affairs. The ultimate authority is the village people and the Petitioner as well as the other Respondents, who are functionaries of the Village Panchayat union, are accountable and answerable to the villagers. The Petitioner and the Respondents 3 and 4 should realize that they have been assigned their respective duties only for the betterment as well as in the interest of the villagers. They should discharge their functions with a social outlook. These unwanted litigations would hamper the developmental activities of the Panchayat and as such, both the Petitioner and Respondents should bury their differences in the interest of the Panchayat.

14. Therefore, I am of the view that the Respondents 3 and 4 are bound to allow the Petitioner to have access to all the records of the Panchayat Union and no action should be taken by the Respondents 3 and 4 which would defeat the mandatory provision as contained in Section 52(2) of the Tamil Nadu Panchayats Act, 1994. The Writ Petition is disposed of with the above direction. No costs.