

Rural Development and Panchayat Raj – Villupuram District – Ginghee Panchayat Union, Mela Arungunam Panchayat – Tmt.Senthamizh Selvi, formerly Panchayat President – Revision Petition filed challenging removal order / notification of the Collector – Final order issued.

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**Rural Development & Panchayat Raj (P.R.IV) Department**

G.O.(D) No. 233

Dated: 29.4.2009

Read:

1. Collector, Villupuram proceedings Na.Ka.A6/4097/2007/AD (Pt)dated 10.6.2008.
2. Notification in Tamil Nadu Government Gazette No.26, dated 2.7.2008.
3. Revision Petition of Tmt.Senthamizh Selvi Ex-President, Mela Arungunam Panchayat, Dated 19.11.2008.

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**ORDER:**

The Collector Villupuram District initiated action u/s 205 (1) of Tamil Nadu Panchayat Act, 1994 against Tmt. Senthamizh Selvi Ex-President, Mela Arungunam Panchayat, for financial irregularities relating to preparation of Bogus attendance by floating rules and misused her powers in implementation of NREGS.

2. As a result of the action and proved misappropriation of funds, the Collector removed her from the post of Panchayat President on 10.6.2008 in the reference 1<sup>st</sup> cited and notified the same in the Tamil Nadu Government Gazette on 02.07.08

3. The removed Panchayat President on 19.11.08 filed Revision Petition to Government against the orders of the Collector, Villupuram. The Revision Petitioner was given opportunities to present her case in person on 30.12.2008 she presented her written explanation in person.

4. The Written and oral arguments were recorded and was examined with reference to the records of Collector. The Contention of the petitioner and observation of Government on the same are examined as follows:

**Contention of the Petitioner:**

The impugned proceeding are arbitrary, illegal and capricious.

The impugned order of the Collector is malafide, bias and arbitrariness on the ground that no evidence or record to show that the appellant misappropriated the amount of Rs. 63,440/- as charged, the Vice- President, Member, and other person who are all responsible for the lapse or charges collectively has been let of without taking any action and the action taken only against the appellant and thereby impugned order is liable to quashed.

### **Observation of the Government:**

Original records were verified. On specific complaint, the B.D.O, Ginghee has conducted enquiry on 2.6.2007 in the presence of villagers, and complainant and concluded that allegations are true and advised Tmt.Senthamizh Selvi to remit the misappropriated NREG Scheme Fund amount of Rs.63,440/- into Panchayat account and she remitted the amount on 6.6.07. Charges were framed against her by the Collector on 16.10.2007. The appellant submitted her explanation on 29.10.2007. The Collector instructed the Tahsildhar, Ginghee on 13.11.2007 to take appropriate action under section 205 of the Tamil Nadu Panchayat Act,1994 and report. The Tahsildhar convened a special meeting of the Village Panchayat and recorded the views of the Panchayat and forwarded to the Collector. The Collector in his discretion came to the conclusion that the appellant has committed mistake and ordered for her removal. Thus, the Collector has followed the procedures laid down under Section 205 of the Tamil Nadu Panchayat Act, 1994 and the proceedings of removing the President is in order. Therefore the contention of the petitioner is liable to be rejected.

### **Contention of the Petitioner:**

**B.** The Collector failed to consider that the appellant does not have any individual role to misappropriate amount as charged against her. The third respondent (The Block Development Officer Village Panchayat Ginghee Panchayat Union), Block Engineer, Technical person from DRDA, Makkal Nala Paninyalar, Panchayat Assistant, Vice-President, respective ward Member, representatives from self help groups are all responsible for the lapse on the charges. The role of the appellant is only a join signatory in supervision of the work, withdrawal of the amount as per advice of the third respondent and disbursement of the wages to the NMR by the committee. No action against the Vice-president, ward Members and other respective officers and members of the disbursing committee and officer who are responsible for the implementation of the scheme and there by the order of the first respondent is liable to be quashed on the ground of non-application of mind, bias and arbitrariness.

The collector ought to have taken action against the Vice president, Members and responsible persons along with the President. If at all the Collector wanted to curb the violation only after the filing a case before the Hon'ble Magistrate Court as per the NREG scheme as per Page No. 65 of the guide and there by the Collector order is bad. Instead of removing the Vice

president and other responsible person allowing the Vice President to hold the post of President in removal of appellant is against all cannons of Law and the order is bad.

### **Observation of the Government:**

The above argument of the petitioner is not correct.

It has been laid down under section 25 of the NREG Act, 2005 that whoever contravenes the provisions of the said Act shall on conviction be liable to fine which may extend to Rs.1000/-. This is a panel provision involving criminal proceedings. The removal of the appellant from the office of the President is under Section 205 of the Tamil Nadu Panchayat Act, 1994 which is a disciplinary action.

In exercise of the powers conferred by sub section (1) of section 4 of the NREG Act, 2005 (Central Act 42/05) the Tamil Nadu Rural Employment Guarantee Scheme was formulated. According to which the Scheme should be implemented by the Panchayats. As per section 46 of the Tamil Nadu Panchayats Act, 1994 (TNAAct 21/94) the President of a Village Panchayat shall execute or implement all schemes, programmes or activities as may be entrusted to Village Panchayat from time to time. Disbursement of wages under the said scheme is not by the committee as stated by the petitioner. Disbursement should be by the President in the presence of the committee and the appellant failed to do so. If President willfully omits or refers to carryout or disobeys and provisions of this Act, or any Rule, byelaw, Regulation or lawful order made or issued under the Tamil Nadu Panchayats Act, 1994 he/she can be removed from office as per section 205 of the said Act. The Collector has ordered for enquiry on written complaint. The B.D.O, Ginghee conducted enquiry on 2.6.07. Therefore charges were framed against her and she also submitted her explanation.

Having not satisfied on her explanation, the Collector has directed the Tahsildhar, Ginghee get the views of the Panchayat. On 21.1.08 the Tahsildhar convened to meeting of the Panchayat and obtained the views of the members and communicated to the Collector for further action. After considering the explanation of the individual and the views of the Panchayat and with evidence in the records the Collector has passed order of removal which is in consonance with the provisions contained in Section 205 of the said Act. Further the Collector has framed charges under rule 17(b) of the TNCS(D&A) rules against the Block Development Officer and U.E and initiated action for removal of the Makkal Nala Paniyalar and the Panchayat Assistant. Therefore the contention of the petitioner is liable to be rejected.

### **Contention of the Petitioner:**

**C.** The Collector failed to consider that no beneficiary has given a complaint against the appellant or anyone else alleging forging for their signature or left thumb impression by the appellant. No beneficiary has been examined in front of the appellant. Further the appellant denied the charges and confirmed that she paid amount back under the pressure of the third respondent (The Block

Development officer) (Village Panchayat) threatening that if she fails to pay, she will be removed from the president post by taking the action under section 205 of the Panchayat act 1994 and not admitting the guilt. In a situation removing the appellant herein without giving opportunities is hit by violation of natural justices and impugned order liable to be quashed.

### **Observation of the Government:**

The Statement of the appellant is wrong. Originally the complaint had been received from Rotary Community Corps of the village and during enquiry also the village people have witnessed that the signatures in the NMR are not belonging to them. The appellant had remitted back the amount misappropriated by her only after the complaint is raised. If it was not detected, the amount would not have been remitted back and there by causing loss to Government. Further sufficient opportunities have been given to her, such as enquiry, calling her explanation elaborately and after considering the explanation with evidence in the records and views of the Panchayat and the huge loss incurred to Government etc., the removal order was passed under section 205 (1) of the Tamil Nadu Panchayats Act, 1994 following the procedure. Therefore the contention of the petitioner is liable to be rejected.

### **Contention of the Petitioner:**

**D.** The Collector failed to consider that the Central Government framed a rule for implementation of the scheme and penal section has been enumerated to punish the violators in the NREG scheme. As per penal provision in page number 65 in NREG scheme guide, any violation of the rule in implementing the scheme is warrant only imposition of fine of Rs 1000/-. The Collector instead of appreciating the above facts and drop the further proceeding, they took action under the section 205 (1) of the act and directed the Tashildhar on 13/11/2007 to conduct a meeting with reference to the section (3) to (10) of the act and passed the impugned order removing the appellant who has been elected by people mandated carelessly without giving respect to the Panchayat Raj act and violating the same. Hence the above order is amount to or hit by non-application of mind, as the impugned order is not sustainable in law.

The Collector failed to consider that the Central Government framed a rule for implementation of the scheme and penal section has been enumerated to punish the violators in the NREG scheme. As per penal provision in page number 65 in NREG scheme guide, any violation of the rule in implementing the scheme is warrant only imposition of fine of Rs. 1000/-, or taking criminal action as enumerated in the scheme of punishment before the Hon'ble Magistrate Court. But without taking criminal action and instead of appreciating the above facts and drop the further proceeding, they took action under the section 205 (1) of the act and directed the Tashildhar on 13/11/2007 to conduct a meeting with

reference to the section (3) to (10) of the act and passed the impunged order removing the appellant who has been elected by people mandate carelessly passed the impunged order is amount to or hit by non application of mind, as the impunged order is not sustainable in law.

**Observation of the Government:**

Original records were verified. The argument that criminal action alone can be taken for violation in the NREG schemes is not correct. As already stated ante, the penal action in the NREG Act is a separate one. In this case the Collector has invoked the disciplinary proceedings against the President under the Tamil Nadu Panchayat Act, 1994 which can not be argued as not sustainable in law. Therefore the contention of the petitioner is liable to be rejected.

**Contention of the Petitioner :**

**E.** The Collector failed to consider that the Tashildhar issued the notice to the appellant and other council member on 10/01/2008 instructing them to attend the council meeting to be held on 21/01/2008 without referring the subject to be discussed by serving agenda and thereby meeting held on 21/01/2008 and the proceeding taken in the meeting is invalid as per rule 8 of (Quorum and Producer for the convening and conduct of meetings of Village Panchayat) of Rules 1999 and there by the impunged order of third respondent is liable to be quashed.

The Collector failed to consider that the Tashildhar issued the notice to the appellant and other council member on 10/01/2008 instructing them to attend the council meeting to be held on 21/01/2008 without referring the subject to be discussed by serving agenda and there by meeting held on 21/10/2008 and the proceeding taken in the meeting is invalid as per rule 8 of (Quorum and Producer for the Convening and Conduct meeting of Village panchayat) of Rules 1999 and there by the impunged order of third respondent is liable to be quashed.

**Observation of the Government:**

The statement of the appellant is wrong. The Tahsildar has sent the notice to all ward members clearly informing that the meeting is convened under section 205 (3- 10) which is to ascertain the views of Panchayat for the removal of President. And at the time of meeting also, the subject was put forth before the Panchayat and the views of members were recorded as per the procedure laid down in the Act by the Tahsildar. The contention of the petitioner is liable to be rejected.

**Contention of the Peitioner :**

**F.** The Collector failed to consider that no meeting held on 21/01/2008. The Tahsildhar without conducting a meeting asked the council members to stand outside the panchayat office and directed them to come one by one to the council hall to know the views of the councilors. The Tashildhar called secretly councilors

one by one and forced them to express their view in favour of the removal of the president admittedly. Even thereafter out of six members three members recorded their views against the removal of the president. Hence the Tashildhar admitted that he has not conducted council meeting and recorded the views of the each councilor secretly. Hence action taken by the Tashildhar is not in accordance with the section 205 (3 to 10) of the Act and thereby impunged order of the third respondent is liable to be quashed on the ground of non-compliance of section 205 (3 to 10) of the Act.

The First respondent failed to consider that no meeting held on 21/01/2008. The Tashildhar without conducting a meeting asked the council member to stand outside the Panchayat office and directed them to come one by one to the council hall to know the views of the councilors. The Tashildhar called secretly councilors one by one and forced them to express their view in favour of the removal of the president admittedly. Even thereafter out of six member three member recorded their views against the removal of the president. Hence the Tashildhar admitted that he has not conducted council meeting and recorded the views of the each councilor secretly which is violation of sub section 3 to 10 of 205 of the Act. Hence the action taken by the Tashildhar is not in accordance with the section 205 (3 to 10) of the Act and thereby impunged order of the third respondent is liable to be quashed on the ground of non-complain of Section 205 (3 to 10) of the Act.

#### **Observation of the Government :**

The statement in the para is wrong. The Tahsildar has sent the notice to all ward members that the meeting is convened under section 205 (3-10) which is to ascertain the views of Panchayat for the removal of President. Further the proposal along with charges and explanations of the appellatant were read out in the presence of ward members including President at the time of meeting of Panchayat convened on 21.1.2008 and the Tahsildar recorded the views of ward members as per the procedure laid down in the Act and submitted the same to the Inspector of Panchayats for his consideration. Therefore there is no violation of Act as said by the appellatant. Therefore the contention of the petitioner is liable to be rejected.

#### **Contention of the Petitioner :**

**G.** The Collector failed to consider that the appellatant submit that on the receipt of the report from the Tashildhar dated 21/01/2008, the first respondent passed an order under section 205 (11) removing the appellatant from the post of President on 10/06/2008 and same is gazetted on 02/07/2008. The Tashildhar failed to give opportunities to the appellatant since there is no majority view against the appellatant and the first respondent did not set out the reason in the order how the first respondent comes to subjective satisfaction before removing the President. As per verdict of this Hon'ble High Court, when there is no majority of the view against the appellatant, he must be given an opportunity before removal. Hence the order of the first respondent dated 10/06/2008 and 02/07/2008 is liable to be quashed.

The Collector failed to consider that on the receipt of the report from the Tashildhar dated 21/01/2008, the first respondent passed an order under section 205 (11) removing the appellant from the post of President on 10/06/2008 and same is gazetted on 02/07/2008. The Tashildhar failed to give opportunities to the appellant since there is no majority view against the appellant and the first respondent did not set out the reason in the order how the first respondent comes to subjective satisfaction before removing the President. As per verdict of this Hon'ble High Court, when there is no majority of the view against the appellant, he must be given an opportunity before removal. Hence the order of the first respondent dated 10/06/2008 and 02/07/2008 is liable to be quashed.

### **Observation of the Government:**

Sufficient opportunity was given to the appellant by the Collector. The duty of the Tahsildhar under section 205 of the Tamil Nadu Panchayat Act, 1994 is to convene a meeting to record the views of the Panchayat. In such a meeting there should be no debate. The Tahsildhar, Ginghee has recorded and forwarded the views of the Panchayat to the Collector. After considering the views of the Village Panchayat in this regard, the Collector in his discretion ordered for removal. The Collector has exercised discretionary powers which is well within the law. Therefore the contention of the petitioner is liable to be rejected.

### **Contention of the Petitioner :**

**H.** The appellant submit that the decision of the collector is totally unreasonable and no reasonable person would come to such a conclusion, which the Collector has come to on the basis of the material on the unproven record. The decision of the first respondent suffer from Wednesbury's principle of unreasonableness as held in the Tata cellular case and warrants intervention and interdiction by the Hon'ble Secretary to the Government Department of Rural Development and Panchayat Raj.

The appellant submit that the decision of the Collector is totally unreasonable and no reasonable person would come to such a conclusion, which the first respondent has come to on the basis of the material on the unproven record. The decision of the first respondent suffer from Wednesbury's principle of unreasonableness as held in the Tata cellular case and warrants intervention and interdiction by Hon'ble Secretary to the Government Department of Rural Development and Panchayat Raj.

### **Observation of the Government :**

The removal order is issued based on the proven records such as the inquiry conducted with the beneficiaries and they informed that they were not worked on those days. The Panchayat Assistant and Makkal Nala Paniyalar of the

Melarungunam Village had also reported that no works were held on those days in question. Therefore the forged signatures obtained in the NMR is obviously proved. Further the appellant had remitted back the misappropriated amount of Rs.63440/- on 6.6.2007. In her explanation for the notice issued u/s. 205, she has informed that in future such an incident will not happened and begged pardon. Hence the misappropriation is clearly proved based on records, enquiry and action of the appellant by repayment. After considering all aspects and satisfied that the misappropriation is proved & applying mind the impugned order was passed. The impugned proceedings had been issued as per the provisions laid down u/s. 205 of Tamil Nadu Panchayat Act 1994 and there is no violation of law and principles of natural justice. Hence it is submitted that Wednesbury's principle of unreasonableness is not occurred in this case as said by the petitioner. Further in the Tata Cellular case, the question in matter is awarding of tender; whereas in this case the matter involved is misappropriation of public money which is severe in nature. The impugned order is issued with no malafide intention, in the manner of bias, or arbitrariness. The power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, the administrative authority while exercising a discretionary power is balanced and in proportion to the object of the power conferred. Therefore the actions had been initiated as per the provision postulated under section 205 (11) as empowered to Inspector of Panchayats/ District Collector. Therefore the contention of the petitioner is liable to be rejected.

**Contention of the Petitioner :**

**I.** The appellant submit that there is no evidence or record to show that the appellant is misappropriated as charged by the respondent individually and yet she has been held guilty of the charges alone in a perverse manner. If at all any enquiry has been conducted only behind back of the appellant and thereby the impugned order of the first respondent is liable to be quashed.

The appellant submit that there is no evidence or record to show that the appellant is misappropriated as charged by the respondent individually and yet she has been held guilty of the charges alone in a perverse manner. If at all, any enquiry has been conducted only behind back of the appellant and thereby the impugned order of the first respondent is liable to be quashed.

**Observation of the Government :**

The removal order is issued based on the proven records such as the statements given by the beneficiaries and they informed that they have not worked on those days. The Panchayat Assistant and Makkal Nala Paniyalar of the Melarungunam Village had also reported that no work was held on those days in question. Further the appellant had remitted back the misappropriated amount of Rs.63,440/- on 6.6.2007; Hence it is obvious that she has agreed the misappropriation and also to avoid filing criminal case against her. Further as per Act after issuing a notice under section 205, no enquiry is necessary. The contention of the petitioner is liable to be rejected.

**Contention of the Pettioner :**

**J.** The impunged order of the first respondent is malafide, bias and arbitrariness on the ground that no evidence or record to show that the appellatant misappropriated the amount of Rs 63,440 as charged. The Vice-President, members, and other persons who are all responsible for the lapse or charges collectively have been let off without taking any action and the action taken only against the appellatant and thereby impunged order is liable to quashed.

No written argument was produced on this ground.

**Remarks of the Department :**

The Original records were verified with the remarks of the Collector. Therefore the contention of the petitioner is liable to be rejected.

**Observation of the Government**

The original records received from the Collector, the contention of the Revision Petitioner and additional arguments presented by the Petitioner during personal hearing were examined carefully and independently by the Government in detail.

5. After detailed examination the Government have decided to reject the revision petition of Tmt.Senthamizh Selvi, formerly Panchayat President, Mela Arungunam Panchayat, Ginghee Panchayat Union, Villupuram District as devoid of merits and accordingly reject the Revision Petition.

(BY ORDER OF THE GOVERNOR)

**K.ASHOK VARDHAN SHETTY,**  
PRINCIPAL SECRETARY TO GOVERNMENT