

Tirunelveli District – Mela Neelithanallur Panchayat Union, Mela Ilandaikulam Panchayat – Thiru.Chellapandian formerly Panchayat President – Revision Petition filed challenging removal order / notification of the Collector – Final order issued.

Rural Development and Panchayat Raj (P.R.IV) Department

G.O.(D) No.293

Dated: 25.5.2009

Read:

1. Collector, Tirunelveli Proceedings No.Roc.A6/2144/2007, dated 20.9.2007.
2. Notification No.VI(2)/594/2007 Published in Tamil Nadu Government Gazette No.42, dated 31.10.2007.
3. Revision Petition of Thiru.Chellapandian, Ex-President, Mela Ilandaikulam Panchayat, Dated 16.7.2008.

ORDER:

The Collector Tirunelveli District initiated action u/s 205 (1) of Tamil Nadu Panchayats Act, 1994 against Thiru.Chellapandian, Ex-President, Mela Ilandaikulam Panchayat, for financial irregularities and misuse of Powers.

2. As a result of the action and proved misappropriation of funds, the Collector removed him from the office of Panchayat President on 20.9.07 in the reference 1st cited and notified the same in the Tamil Nadu Government Gazette on 31.10.2007.

3. The removed Panchayat President on 16.07.08 filed Revision Petition to Government against the orders of the Collector, Tirunelveli. The Revision Petition was given opportunity to present his case in person on 12.01.09. He presented his written submission in person.

4. The Original records of the Collector, Tirunelveli 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. The contentions of the petitioner and observations of the Government on the same are as follows:

Contention of the Petitioner:

(A) Admittedly while adopting the procedures contemplated in Section 205 of Tamil Nadu Panchayats Act 1994, the Inspector of Panchayats concerned must follow strictly the necessary conditions which are required to be complied with. In the present case, the Tahsildar, Sankarankoil while at the time of proceeding with Section 205, has not conducted the separate proceeding as far as the Appellant is concerned, whereas he has conducted a joint proceeding by including the alleged participation of the Vice President also. The said irregularity with regard to the manner in which the proceedings were conducted vitiates the entire impugned

order. Admittedly Section 205 of the said Act is nothing but a penal provision and while at the time of thinking about awarding of punishment to a particular person, he has to be necessarily given with all sort of opportunities for which at any point to time, he should not be made to see the confusion. That is the reason two separate provisions have been enumerated namely 205 and 206 for the President and Vice President. Since in this case for the both President and Vice President, a joint proceeding was initiated and concluded, the result of the same should be declared as bad.

Oral /written deposition during personal hearing ;

The Thasildar has not recorded the proceeding of the meeting properly.

Observation of the Government;

Separate notice as contemplated under section 205 (1) & 206 (1) of the Tamil Nadu Panchayats Act, 1994 respectively for President and Vice President was given. The other procedure for removal namely convening of the Panchayat council meeting for getting opinion of the members Tashildar report and Collector notification are all one and the same. Hence there is nothing wrong in conducting joint proceedings. More over the both President and Vice President were alleged of the same nature of charge. The fact that they colluded with each other necessitated such a joint action by the Collector. Further the Hon'ble High Court Madras to which a Writ Petition and Appeal was preferred by removed President, did not find any fault with the proceeding of the Collector Under Section 205(1) to (11) of the Act. There is no procedural irregularities. Therefore the contention of the Petitioner is liable to be rejected.

Contention of the Petitioner :

(B) Prior to the passing of final order, it is incumbent on the part of the Collector that Tashildar concerned should be directed to conduct a meeting to ascertain views so as to find out the opinion of each and every member of Panchayat and it must be necessary on the part of the said Tahsildar to strictly comply with the Section 205(8) of Tamil Nadu Panchayats Act, wherein it has been clearly pointed out that the Tahsildar shall read to the Village Panchayat the notice of the Inspector and the explanation if any, of the president and the proposal for the removal of the President for the consideration. In this case, the above said three documents have not been read before the members which certainly will have to be construed as an irregularity, as a result of which the consequential proceedings should be declared as null and void.

Oral /written deposition during personal hearing ;

The Tahsilder has not recorded the proceedings properly.

Observation of the Government;

The record of the Collector was verified. The proposal of the Collector itself mentions the notice under section 205(1) and 206(1) respectively and the explanation of the President and Vice President and proposal to remove them. The deliberations of the Panchayat Council thereof have taken place only on the basis of

the above. In the minutes book the Tashildar Sankarankoil has recorded views of the Panchayat in the meeting held at 3.00 p.m on 10.9.2007. There is no procedural violation. Therefore the contention of the Petitioner is liable to be rejected.

Contention of the Petitioner :

(C) As far as the initiation of the proceeding under Section 205(1) (b) is concerned, that can be done only if the Inspector of Panchayat is satisfied that the President willfully omits or refuses to carry out or disobeys any provision of the said Act or any Rule or any regulation of the Government. It is significant to say herein that in the present case, admittedly the Collector has not made any allegation as against the Appellant as if he has swindled the funds allotted to the Panchayat. The only mistake which is alleged to have been found by the Collector is that while at the time of disbursing the Panchayat funds, the Appellant had not strictly followed the direction of the Government. Since the Appellant's alleged dereliction would not come within the purview of Section 205(1)(b) of the said Act, the Collector at any point of time could not have been in the position of having subjective satisfaction so as to remove the Appellant from the post of Panchayat President.

Oral /written deposition during personal hearing ;

On the advice of Block Development Officer, I have remitted back Rs.50,000/- drawn by my wife for group houses and 75,000/- for laying of Road etc.

Observation of the Government:

The petitioner has remitted back a sum of Rs.75000/- on the advice of Block Development Officer to the Panchayat fund only after inspection of accounts which reveals that he made the expenditure without any proper receipt. The action of the petitioner is serious in nature and dereliction of duty.

Money cannot be drawn from Scheme Fund (Account No.3) without Engineer's measurement and Block Development Officer / Union Engineer's pass order. This is a clear case of malafide.

Therefore the contention of the Petitioner is liable to be rejected.

Contention of the Petitioner :

(D) The Collector has failed to appreciate a vital fact that soon after his intervention in connection with the subject matter i.e. while at the time of framing charges, voluntarily in order to avoid further legal proceedings, immediately the Appellant has paid the entire amount. In such a situation, the proceedings proceeded should have been dropped.

Oral /written deposition during personal hearing ;

The same grounds expressed during personal hearing.

Observation of the Government:

During the hearing on 12.1.2009, the petitioner has reiterated the above views for consideration. After the inspection of the accounts of the Village Panchayat by the staff of Mela Neelithanallur Panchayat, the petitioner has

refunded the amount of Rs.75,000/- to the Panchayat account. If the Inspection of the accounts had not been done at that time the entire amount in question might have been swindled by the petitioner moreover, the petitioner has drawn up a sum of Rs.50,000/- from the Village Panchayat fund and handed over to his wife towards construction of group houses. As per the direction of the Block Development Officer, later on the amount was remitted back. This incident considered one of a severe irregularity committed by the petitioner. Hence the averment of the petitioner is not correct.

Therefore the contention of the petitioner is liable to be rejected on the same grounds.

Contention of the Petitioner

(E) The Collector should have looked into the vital aspect in connection with the present case since for each and every disbursement of amount, prior general body meeting was conducted in the said Panchayat, in which after getting concurred view from all the members, the alleged disbursement was made. When thus being so, on the ground or mere and slight alleged violation of the Government rule, the Collector should not have gone to the extent of removing the Appellant.

Oral /written deposition during personal hearing :

The Tahsildar has not recorded the view of members properly.

Observation of the Government;

The petitioner had committed irregularities such as temporary misappropriation of funds and misclassification of amounts etc. The petitioner as a President of village Panchayat, ought to have drawn funds with proper approval of Village Panchayat and proper vouchers for the expenditure. He has not followed the procedures in spending the funds of the Village Panchayat. He has also spent the funds on his own accord. Because of his activities, the petitioner has been removed from the office of the President, Mela Ilandaikulam Village Panchayat.

Therefore the contention of the Petitioner is liable to be rejected.

Contention of the Petitioner :

(F) On a bare perusal of the impugned order passed by the Collector vide m6/2144/07 dated 20.9.2007, it is crystal clear that the Block Development Officer, Mela Neelithanallur has not even met any one of the explanation submitted by the Appellant and he has not thought about considering the view of the members of the said Panchayat while at the time of arriving at a final conclusion. In his order he simply refers the date on which the above said events were taken place which will not satisfy the requirements to be done by him so as to decide the final issue. Unless a speaking order is passed by the Collector and unless he has categorically discussed every thing in his order, a clear inference can be drawn as if he has decided the present issue in a mechanical manner arbitrarily, without having any subjective satisfaction. It is pertinent to say herein that the view of the each and every members in this connection which have been expressed during the course of

view ascertaining meeting which has been conducted by the Tahsildar, should have been considered by the Collector while at the time of taking a decision with regard to the removal of the Appellant. In the present case admittedly all the members have categorically not only supported the Appellant but also requested the Tahsildar to drop all further proceedings in this context and the said fact can be found even from a bare perusal of the Minute Book. In such a situation, the Collector should not have simply ignored the said majority view. In fact the said principle has been accepted by this Honorable Court in the case of J. Maria Selvam Vs. State reported in 2006 (3) MLJ 537 wherein in a similar situation, the concerned Panchayat President was safeguarded from the penalization with regard to the removal.

Oral /written deposition during personal hearing ;

The same grounds expressed during personal hearing

Observation of the Government;

The case law, namely, " J.Maria Selvam Vs the State of Tamil Nadu" is not relevant to this case on hand. The reported judgment is on the scope and applicability of section 205 (12) and alternative remedy available. The Hon'ble High Court, Madras held that remedy available Under Section 205 (12) of the Act does not confer a statutory right of appeal but only a discretionary right. It was further held that such remedy (under Section 205(12)) is different from an effective appeal remedy. The procedure followed is in order..

Therefore the contention of the Petitioner is liable to be rejected

5. After detailed examination. the Government have decided to reject the revision petition of Thiru.Chellapandian, formerly Panchayat President, Mela Iilandaikulam Panchayat, Tirunelveli District as devoid of merits and accordingly reject the Revision Petition.

(BY ORDER OF THE GOVERNOR)

K.ASHOK VARDHAN SHETTY,
PRINCIPAL SECRETARY TO GOVERNMENT.