

Tiruvallur District – Sholavaram Panchayat Union, Kummanur Panchayat – Tmt.Egavalli Mahalingam, 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. 294

Dated: 25.5.2009

Read:

1. Collector, Tiruvallur proceedings No.1760/07/A3, dated 19.8.2008.
2. Notification No (VI) (2) 676/2008 published in Tamil Nadu Government Gazette No.35, dated 3.9.2008.
3. Revision Petition of Tmt.Egavalli Mahalingam, Ex-President, Kummanur Panchayat, Tiruvallur, dated 19.1.2009 .

ORDER:

The Collector Thiruvallur District initiated action u/s 205 (1) of Tamil Nadu Panchayats Act, 1994 against Tmt.Egavalli Mahalingam, Ex-President, Kummanur Panchayat, for financial irregularities and misuse of her Powers in the matter of auctioning trees belonging to the Panchayat.

2. As a result of the action and proved misappropriation of funds, the Collector removed her from the post of Panchayat President on 19.8.2008 in the reference 1st cited and notified the same in the Tamil Nadu Government Gazette on 3.9.2008.

3. The removed Panchayat President on 19.12.2008 filed Revision Petition to Government against the orders of the Collector, Tiruvallur. The Revision Petitioner was given opportunities to present her case in person on 23.3.2009. She presented her written explanation in person.

4. The Original records of the Collector, Tiruvallur 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:

Contentions of the Petitioner (a),(b)and(c):

The impugned order of the Collector is arbitrary, illegal and also against to the principles of natural justice.

The Collector failed to consider the innocence of the petitioner and also about the fact that the petitioner is an uneducated woman hailing from a Scheduled Community and the alleged auction proceedings has carried by the instigation given by the village Panchayat office.

The Ist show cause notice dated 04.12.2007 issued on the basis of the complaint given by the Vice-President by name Mrs.Annammal refer to incident happened even prior to assumption of office by this petitioner.

Observation of the Government:

A show cause notice as contemplated under Section 205 of the Tamil Nadu Panchayats Act 1994 was issued by the Collector on 29.12.2007 whereby the petitioner was granted 10 days time to submit her explanation. The show cause notice had disclosed that the petitioner had caused financial loss to the tune of about Rs.3.00 Lakhs by auctioning the trees without any norms. The petitioner had submitted her reply to the show cause notice on 21.02.2008 that the trees were auctioned in accordance with law and enclosed documents to substantiate the same. One of the documents enclosed by the petitioner contains signatures of the villagers who were present at the time of auction conducted on 18.02.2007. On perusal of the same, it is found that one Mahalingam had signed along with date 10.05.2007, which would beyond doubt prove that the documents were fabricated to get over the show cause notice. The fabrication of the documents will clearly prove that there was financial loss to the Panchayat by the act of the petitioner and auction was not conducted in a fair manner. The Collector's finding is correct and legitimate.

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

Contention of the Petitioner (d)

The Collector has failed to consider that the auction was conducted in the presence of the Vice-President and other members of the Panchayat Union and huge numbers of villagers and all these peoples had witnessed the auction, when the complainant (i.e) Vice-President herself subscribed to auction proceedings and having participated in the auction proceedings with the malafide intention had preferred the above complaint and which resulted on the basis of the said complaint itself against the principles of law.

Observation of the Government :

It is seen from the records that the President, Vice Chairman of Sholavaram Panchayat Union, the Village Administrative Officer, and 4 others have signed the auction proceedings and the Complainant's signatures is not available to confirm that she was present during the auction. Therefore the contention of the petitioner is not acceptable and is liable to be rejected.

Contention of the Petitioner : (e) , (f) and(g)

The Petitioner advised to submit that the violation alleged to have committed by the petitioner will come under the provisions stated in the charge and punishing

the petitioner for such with grave punishment of removal will amount to colorable exercise done with arbitrary manner.

The Collector never furnish the copy complaint dated 09.04.2007 and 23.07.2007, 9.11.2007 and the Collector never served the conclusion of the copy of the alleged valuation fixed.

The Collector without any conclusive proof over existence of Karuvelam Trees as proceeded under the wrong premises. And now the impugned order says the "Green Trees" that is clearly shows vindictive nature of the 1st respondent. The very fact, while describing the trees, the employment of 3 different words about the nature of trees, would shows that the malafide intention of the Collector namely in the first and second respondents charge memos and removal orders.

Observation of the Government:

In the first notice dated 4.12.2007 it was recorded that auctioned trees were "Karuvela" trees. Subsequent enquiry confirmed that during the auction trees such as Vembu, Kattuvagai, Nunan and Veli Karuvelam were auctioned which were removed from the Government Porampoke land classified as Thoppu Poramboke. The subsequent report of the District Forest Officer, Ponneri also Confirmed that the following tall grown trees were cut:-

1. Kattu Vagai	-	3
2. Vembu	-	5
3. Nunan	-	2
4. Velikaruvel	-	2

Therefore a revised notice was issued deleting the word in particular "Karuvela". There is nothing wrong is issuing revised notice. After observing all the formalities and giving opportunity to the petitioner the Collector has passed order of removal which was published in the Tamil Nadu Government Gazette dated 3.9.2008 under section 205 of the Tamil Nadu Panchayats Act, 1994. Therefore the contention of the petitioner is not acceptable and is liable to be rejected.

Contention of the Petitioner : (h)

The violation non- following the rules under Tamil Nadu Panchayat Proceeding for conduct Auction, cited by the Collector would not be applied in the above case, if the auction value is exceed Rs. 10,000/- the above rules are applicable.

Representation during Personal Hearing

Advocate of the petitioner drew attention to Rule 3(xi) Rule 15 of Tamil Nadu (Procedure for conducting public auction of leases and sales in Panchayats) Rules, 2001. He stated that in the Adangal there is no mention of Karuvelam Maram;

In the Adangal there is a mention of "ntŷgku«" cutting of any tree which is line is not authorized in the said rules. Further the inadvertent first notice wherein "fUnty ku«" description was used and later revised after the explanation of the petitioner was received. In the revised notice the word "ku«" was used. Later in the notification "gçir ku«" was used.

Observation of the Government:

It is from the Adangal that the land is Government Thoppu' wherein the Panchayat "Kalam" lies in which there is one "ntŷgku«". Also at the adjacent Village Natham there are "2 ntŷgku«". In a Thoppu there will be various kinds of trees. Enquiry revealed at during the auction trees such as Vembu, Kattu Vagai, Nunan and Veli Karuvelam were auctioned. It is seen from the records that the petitioner has not asked for copies of earlier petitions against her.

It has clearly been laid down in the Tamil Nadu Panchayat (Procedure for conducting public action of leases and sales in Panchayats) Rules, 2001 wide publicity to be given for auction sale and prior approval of the estimate of the property and confirmation of the auction sale of the Block Development Officer is necessary. In this case the Block Development Officer, Sholavaram was put in dark about auction sale. It also been laid down in the said Rules in the case of auction conducted by the Panchayat, a committee comprising of 3 members for supervising the conduct of auction may be constituted for ensuring greater transparency. In the case of a Village Panchayat, such committee may include beside, the President, vice President and the members from the ward where the property lies. This has not been followed and auction conducted in a hurried manner without following the procedures laid down under the said Rules and not even the Panchayat Assistant is aware of the auction. There by the Petitioner deliberately floated the rules.

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

Contention of the Petitioner : (I) & (J)

The issuance of two show cause notice for the same alleged complaint itself proves that the complaint as false and their act of vindictiveness and the Collector act of after thought.

The act of the Collector in passing the impugned order clearly shows that the impugned order of removal of the petitioner is a predetermined one and no opportunity was given to the petitioner to prove her innocence in the above proceedings.

Observation of the Government :

The Revision Petitioner was given ample opportunity as Verified from records. The contention of the petitioner is liable to be rejected.

Contention of the Petitioner : (k) & (L)

The Collector failed to note that the petitioner had not committed any misuse of powers as provided in the Tamil Nadu Panchayats Act and also could not make any monetary loss to the Panchayat.

The Collector also failed to consider the fact that even according to the register maintained by the Panchayat, there was no Karuvelam trees in the entire panchayat area and that too to the value of Rs.3 Lakhs as alleged in the complaint which fact was also established by the concerned Authorities during enquiry.

Observation of the Government :

The auction conducted by the petitioner is in total violation of the Tamil Nadu Panchayats (Procedure for conducting public auction of leases and sales in Panchayats) Rules, 2001. She has auctioned the various trees that were cut from the Panchayat lands. Her contention is vague. Therefore the contention of the petitioner is liable to be rejected.

Contention of the Petitioner : (m) (n) & (o)

The impugned order of the Collector in all probabilities reflects the punishment imposed on the petitioner which is illegal and unlawful.

The Collector in a high-handed manner failed to consider that the objection of the majority members of the Panchayat.

The Collector has failed to consider the explanations dated 13.12.2007 and 5.1.2008 come to a conclusion about the petitioners exercise of power amounting to the misconduct.

Observation of the Government :

The Collector acted within his powers and provision of section 205 of the Act. The culmination of proving the allegation is the removal of the President as contemplated under section 205(11). The Collector who is a representative of the State and Inspector under the Act cannot be silent on noticing floating of provisions of Act/ Rule and Instruction of the Government resulting in loss to Panchayat. Hence the removal of the President on a proved allegation will not tantamounts to colorable exercise done in a arbitrary manner.

The election to office of Panchayat President is a statutory creation and functioning as President is bound by statutory liminations. Panchayat President who is a Panchayat functionary and a executive of the Panchayat ought to follow provisions of Act / rules and instructions given by Administrative authorities. Therefore violation of the same will, certainly attract punishment under the Act. The Collector has acted as per the provisions of the Act. There is no merit in the Petitioner's contention. Therefore the contention of the petitioner is liable to be rejected.

Contention of the Petitioner :(p)

The detailed removal order was served to the petitioner on 6.10.2008, which also clearly shows, the vindictive nature of the Collector.

Observation of the Government :

As per provision of section 205(11) the removal shall come into force on the date of publication of notification in the Government Gazette.

Servicing a copy is only for information.

The ground adduced by the petitioner is devoid of any merit.

It is a clear case of violation of rules / procedure / instruction resulting in misappropriation and loss to Panchayat. The removal of the Panchayat President as per section 205 (11) is therefore justified. There is no violation of rules. 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 Tmt.Egavalli Mahalingam, formerly Panchayat President, Kummanur Panchayat, Tiruvallore District as devoid of merits and accordingly reject the Revision Petition.

(BY ORDER OF THE GOVERNOR)

K.ASHOK VARDHAN SHETTY,
PRINCIPAL SECRETARY TO GOVERNMENT.