

Tirunelveli District – Mela Neelitha Nallur Panchayat Union, Mela IIandaikulam Panchayat – Thiru.S.R.Jebaraj, formerly Panchayat Vice 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. 298

Dated: 25 .5.2009

Read:

1. Collector, Tirunelveli proceedings Na.Ka.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.S.R.Jebaraj Ex-Vice President, Mela IIandaikulam Panchayat, Dated 16.7.2008.

ORDER:

The Collector Tirunelveli District initiated action u/s 206 (1) of Tamil Nadu Panchayat Act, 1994 against Thiru.S.R.Jebaraj Ex-Vice President, Mela IIandaikulam Panchayat, for financial irregularities and misuse of his Powers.

2. As a result of the action and proved misappropriation of funds, the Collector removed him from the post of Panchayat Vice 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 Vice President on 16.07.08 filed Revision Petition to Government against the orders of the Collector, Tirunelveli. The Revision Petitioner was given opportunities to present his case in person on 12.01.09 he presented his written explanation 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, the Inspector of Panchayats concerned must follow strictly the necessary conditions which are required to be complied with. In the present case, the Tashildar, Sankarankoil while at the time of proceeding with Section 205, had not conducted the separated proceeding as far as the Appellant is concerned, whereas he has conducted a joint proceeding by including the alleged participation of the 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 of 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 ;

Expressed that he was assisting the President on the works executed by the Panchayat and was a co-signatory cheque drawn for Panchayat work.

Observation of the Government;

Separate notice as contemplated under section 205 (1) & 206 (1) of the Tamil Nadu Panchayat Act, 1994 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 all are one and the same. Hence there is nothing wrong in conducting joint proceedings. Moreover both President and the Vice President were alleged of the same nature of charge. The fact that they colluded with each other necessitated such an joint action by the Collector Tirunelveli.

Hence the procedure followed by the Collector is in order. Further the Hon'ble High Court Madras to which a Writ Petition was made by removed Vice President, did not find any fault with the proceeding of the Collector Under Section 206(2) of the Act. There is no merit in the contention. 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 view ascertaining meeting 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 Panchayat 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 Vice President and the proposal for the removal of the Vice 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 ;

No specific representation.

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 recorded views of the Panchayat in the meeting held at 3.00 p.m on 10.9.2007. There is no merit in the contention of the petitioner. 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 Vice 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 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 Vice President.

Oral /written deposition during personal hearing ;

Expressed that he was assisting the President on the works executed by the Panchayat and was a co-signatory cheque drawn for Panchayat work.

Observation of the Government;

Money cannot be drawn from Scheme Fund (Account No.3) without engineers measurement and Block Development Officer / Union Engineer's pass order. The Vice President has colluded with the President as a co-signatory in the cheque wherein the amount was drawn from the scheme funds.

There is no merit in contention of the petitioner. 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 should have been dropped.

Oral /written deposition during personal hearing ;

I acted only in the capacity of co-signatory in the cheque drawn for the Panchayat work.

Observation of the Government;

The payment of entire amount does not vitiate the charge. Therefore the contention of the petitioner is liable to be rejected.

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 ;

Expressed that he was assisting the President on the works executed by the Panchayat and was a co-signatory cheque drawn for Panchayat work.

Observation of the Government;

The petitioner had committed irregularities in such as temporary misappropriation of funds and misclassification of amounts etc in collusion with the President, The petitioner as Vice President of Village Panchayat, ought to have drawn funds along with the President as co-signatory with proper approval of Village Panchayat and proper vouchers for the expenditure proper procedure has not been in spending the funds of the Village Panchayat. This is not a slight violation of rule. But this is a case of willful lapse.

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 Tahsildar, Sankarankoil 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 to 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 each and every member in this connection which has 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 Vice President was safeguarded from the penalization with regard to the removal.

Oral /written deposition during personal hearing ;

Expressed that he was assisting the President on the works executed by the Panchayat and was a co-signatory cheque drawn for Panchayat work.

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 detail examination the Government have decided to reject the revision petition of Thiru.S.R.Jebaraj, formerly Panchayat Vice-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.