

V.Sethuraman Vs. 1. the State Represented by Its

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Court : Chennai

Decided On : Jan-22-2014

Judge : T.RAJA

Appellant : V.Sethuraman

Respondent : 1. the State Represented by Its

Judgement :

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT DATED:

22. 01/2014 CORAM THE HONOURABLE MR.JUSTICE T.RAJA W.P.(MD)No.11223 of 2013 V.Sethuraman .. Petitioner vs 1. The State represented by its Principal Secretary to Government Rural Development and Panchayat Raj Department Fort St.George Chennai 600 009 2. The District Collector Collectorate Madurai District Madurai 3. The Revenue Divisional Officer O/o the Revenue Divisional Officer Usilampatti Post Madurai District 4. The Commissioner Usilampatti Panchayat Union Usilampatti Post Madurai District .. Respondents Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(D) No.312, Rural Development and Panchayat Raj (PR-4) Department dated 03.07.2013 passed by the 1st respondent herein and quash the same as illegal and consequently directing the 1st respondent to notify the removal of the Chairman of Usilampatti Panchayat Union under Section 212(13) of Tamil Nadu Panchayat Act, 1994 on the basis of the report sent by the 3rd

respondent dated 28.03.2013 under Section 212(3) of Tamil Nadu Panchayat Act, 1994. !For Petitioner ... Mr.K.Mahendran ^For Respondents ... Mr.K.Chellapandian Additional Advocate General assisted by Mr.V.Muruganandam Additional Government Pleader :

ORDER

This writ petition has been directed against the impugned G.O.(D) No.312, Rural Development and Panchayat Raj (PR-4) Department dated 3.7.2013 passed by the Principal Secretary to Government, Rural Development and Panchayat Raj Department, Chennai, to quash the same as illegal, with a consequential direction to the first respondent to notify the removal of the Chairman of Usilampatti Panchayat Union under Section 212(13) of the Tamil Nadu Panchayats Act, 1994 on the basis of the report dated 20.3.2013 sent by the Revenue Divisional Officer, Madurai District, the third respondent herein under Section 212(3) of the Tamil Nadu Panchayats Act, 1994.

2. According to the learned counsel for the petitioner, Usilampatti Panchayat Union consists of 13 wards and all the ward members of the said panchayat were elected on the last election held on 29.10.2011. Mr.T.R.Paulpandi, after having contested for the post of Chairmanship, was elected as the Chairman of Usilampatti Panchayat Union. The crux of the dispute, as pleaded by the learned counsel, is that the Chairman of Usilampatti Panchayat Union did not care about the welfare of the general public. As he acted against the interest of the general public and other elected members, a representation was sent to the Revenue Divisional Officer, Madurai the third respondent herein to take appropriate action against the Chairman of Usilampatti Panchayat Union. The further grievance of the petitioner is that the third respondent failed to take action against the said Chairman Mr.T.R.Paulpandi. When a representation was given to the third respondent on 4.2.2013 in terms of Section 212(2) of the Tamil Nadu Panchayats Act (for short, ".the Act".), on 14.2.2013, the third respondent sent a copy of the charges along with the motion to the Chairman of Usilampatti Panchayat Union asking him to give a statement of reply to the charges within a week from the date of receipt of the notice in terms of Section 212(3) of the Tamil Nadu Panchayats Act. On receipt of the said notice, the Chairman of Usilampatti Panchayat Union also

submitted his explanation before the third respondent on 25.2.2013. Thereafter, the third respondent issued a notice dated 2.3.2013 to all the councillors of Usilampatti Panchayat Union, in terms of Section 212(4) of the Act, informing them about the meeting scheduled to be held on 28.3.2013, to decide the issue of no confidence motion against the Chairman of Usilampatti Panchayat Union. However, on receipt of the said notice, Mr.T.R.Paulpandi, Chairman of Usilampatti Panchayat Union, filed Writ Petition (MD) No.4681 of 2013 challenging the notice dated 2.3.2013, to quash the same with a consequential direction to the respondents to pass appropriate orders on his petitions dated 28.12.2012 and 26.2.2013 given under Section 204(4) of the Act, as though there was no co-operation by the members with the Chairman. The learned counsel for the petitioner further stated that since no interim order was passed restraining the third respondent from conducting the meeting scheduled to be held on 28.3.2013, the third respondent conducted the meeting for no confidence motion on 28.3.2013 at 12.00 noon and all the councillors including the Chairman and the Vice Chairman attended the meeting at the fourth respondent's office. However, after the meeting started, the Chairman Mr.T.R.Paulpandi and one Mrs.M.Petchiammal, Councillor of Ward No.11, raised objections to conduct the said meeting on the ground that the writ petition filed by the Chairman was pending before the High Court. Although the third respondent asked them to produce the copy of the interim order not to proceed with the meeting, no such interim order was produced by the Chairman. Hence, the third respondent started the proceedings as per his notice. When the meeting started, the third respondent read out the charges against the Chairman and also the reply given by him and thereupon, the third respondent asked all the councillors as to whether they accepted the reply given by the Chairman or not. In reply, the councillors gave their reply stating that they were not satisfied with the reply given by the Chairman. Only thereafter, the third respondent recorded the same in the minutes book and moved the no confidence motion and also informed the councillors that they can show of their hands, if they oppose the no confidence motion. But none of the members raised their hands. Again the third respondent informed the councillors that they can show of their hands, if they support the no confidence motion. For this, all the 11 councillors had shown their hands in support of the no confidence motion. Subsequently, the third

respondent issued two different kinds of forms to all the councillors, the first form for opposing the no confidence motion and the second form for supporting the no confidence motion. In continuation thereof, the third respondent asked the councillors to fill up any one of the forms and put their signature according to their choice.

3. Continuing his arguments, the learned counsel submitted that all the 11 councillors filled up their forms supporting the no confidence motion and put their signature and thereby the third respondent-Revenue Divisional Officer adopted both the methods, namely, for show of their hands and for filling up of the prescribed forms for voting. By this process, the no confidence motion against the Chairman of Usilampatti Panchayat Union was passed. After the proceedings were over, as per Section 212(12), the third respondent sent a copy of the minutes of the meeting together with a copy of the motion along with the result of the meeting held on 28.3.2013 to the Government. At this stage, he pleaded, on receipt of the minutes of the meeting and the result of voting, the Government shall notify the removal of the said Chairman of Usilampatti Panchayat Union. But, unfortunately, till 18.5.2013, the removal of Chairman was not notified by the first respondent herein. Thereafter, after waiting for two months, the petitioner sent a representation dated 18.5.2013 to the first respondent to pass appropriate orders under sub-section (13) of Section 212 of the Act to notify the removal of Chairman of Usilampatti Panchayat Union. But again the first respondent failed to discharge the duties cast upon him. Moreover, no welfare activities, even sanitary works, were done in the panchayat in view of the legal deadlock, namely, holding of no confidence motion against the Chairman. In view of the aforesaid stalemate created affecting the welfare activities, W.P.(MD) No.9780 of 2013 was filed for a mandamus to direct the first respondent to notify the removal of the said Mr.T.R.Paulpandi from the post of Chairman of Usilampatti Panchayat Union based on the report sent by the third respondent on 28.3.2013 with regard to the no confidence motion along with the representation dated 18.5.2013 sent by the petitioner. When the said writ petition came up for hearing on 19.6.2013, this Court, after hearing both sides, directed the first respondent to pass appropriate orders on the petitioner's representation within a period of five weeks. Finally, pursuant to the order dated 19.6.2013 passed by this Court, the first respondent

passed the impugned order in G.O.(D) No.312, Rural Development and Panchayat Raj (PR-4) Department dated 3.7.2013.

4. Finding fault with the impugned order passed by the first respondent, it was canvassed before this Court by the learned counsel for the petitioner that the first respondent ought not to have invoked the provisions of Section 219 of the Act to set aside the proceedings of the third respondent-Revenue Divisional Officer, as the revisionary power conferred under Section 219 of the Act can be invoked only if any order is passed under Section 218 of the Act. But in the present case, the first respondent acted with arbitrariness and colourful exercise of power in passing the impugned order, therefore, the same is liable to be set aside. When sub-section (13) of Section 212 clearly states that if the motion is carried with the support of not less than 2/3rd of the sanctioned strength of the Panchayat Union Council, the Government shall by notification remove the Chairman of the Panchayat Union Council, in the present case, he pleaded that when admittedly the no confidence motion was successfully passed and out of 13 councillors, 11 councillors had voted in favour of the motion and only 2 members had abstained, the no confidence motion carried out with the support of more than 4/5th of the sanctioned strength of Usilampatti Panchayat Union should have been properly considered by the first respondent to remove the Chairman on the ground of no confidence motion having been passed against him. But, unfortunately, the first respondent failed to note that when the order has been passed by the third respondent under Section 212, therefore, the first respondent legally has no right to call for explanation from the third respondent with respect to the alleged discrepancies pointed out by him for exercising the revisionary power under Section 219 of the Act. Moreover, when the third respondent had properly conducted the meeting and properly passed a final order in the manner known to Section 212, the first respondent should have passed the final notification under Section 212(13) of the Act. Contrary to that, invoking a wrong provision conferred under Section 219 of the Act, wrongly set aside the proceedings initiated by the third respondent on a minor discrepancy that the third respondent had signed the letter dated 27.3.2013 and sent the said letter to the Government even though the meeting was actually held on 28.3.2013 only. Adding further, the learned counsel for the petitioner submitted that when the Revenue Divisional Officer, in his reply,

submitted that there was a clerical and typographical mistake in noting down the date of meeting held on 28.3.2013, the first respondent, giving more importance to the typographical mistake that he had signed the letter on 27.3.2013 even though the meeting was held on 28.3.2013, wrongly attributing motives, refused to accept the explanation offered by the third respondent, with the result the first respondent set aside the entire proceedings of the third respondent, thereby giving no solution to the deadlock prevailing in the Usilampatti Panchayat Union. Although the no confidence motion was successfully passed in the presence of the third respondent in fine tune with the provisions of Section 212 of the Act, the first respondent, he pleaded, having no power to call for explanation from the third respondent, wrongly exercising the revisionary power under Section 219 of the Act, which is meant only to set aside any order passed under Section 218 of the Act, erroneously passed the impugned order. Therefore, he pleaded that the writ petition should be allowed by setting aside the impugned Government Order.

5. Per contra, the learned Additional Advocate General appearing for the respondents submitted that when the impugned order passed by the first respondent is absolutely in order, the challenge made by the petitioner is liable to be negated for the following reasons. Firstly, when Mr.T.R.Paulpandi, Chairman of Usilampatti Panchayat Union filed W.P.(MD) No.4681 of 2013 challenging the impugned notice dated 2.3.2013 issued by the Revenue Divisional Officer with a consequential direction to the Principal Secretary to Government, Rural Development and Panchayat Raj Department and the District Collector, Madurai to pass appropriate orders on his petitions dated 28.12.2012 and 26.2.2013 made under Section 204(4) of the Act which were pending for consideration, this Court, while admitting the writ petition has declined to grant any order of stay of the notice dated 2.3.2013, it would not be proper on the part of the third respondent to convene the meeting of no confidence motion on the wrong premise that the writ petition itself was dismissed at the admission stage. When the said writ petition was admittedly pending before this Court on the date of such meeting, the Revenue Divisional Officer had forwarded the proposal to the Government under Section 212(13) for removal of the Chairman by giving a wrong information that the writ petition was dismissed at the admission stage, which is factually incorrect, since the said writ petition filed by the Chairman challenging the notice dated

2.3.2013 was admitted by the High Court, by refusing to grant stay, does not mean that the third respondent can proceed with the meeting of no confidence motion, for the reason that if the contentions raised in the writ petition are accepted by the Court at the time of hearing the petition, all the subsequent steps taken in the meanwhile based on the wrong information given by the third respondent including the resolution for removal of the Chairman would become ab initio void and would become inoperative. In any event, when it is the bounden duty of the Revenue Divisional Officer to inform the Government and the members of the Panchayat Union Council about the pendency of the writ petition, he cannot wrongly, assuming the role of deciding authority, give misleading information to the Government. Therefore, the first respondent, after obtaining opinion from the learned Advocate General of the State, rightly, exhibiting the discrepancies made by the third respondent, exercising the revisionary power under Section 219 of the Act, set aside the proceedings of the Revenue Divisional Officer, Usilampatti Division.

6. Secondly, the learned Additional Advocate General submitted that the Revenue Divisional Officer had conducted the panchayat union council meeting on 28.3.2013, but wrongly sent his report signed as 27.3.2013 instead of 28.3.2013. Taking note of the said discrepancy also, the Government, after examining in detail the explanation of the third respondent for conducting the no confidence motion against the Chairman of the panchayat in question, rightly refused to accept the explanation given by the third respondent for giving a wrong date on the premise of typographical error as 27.3.2013 instead of 28.3.2013. Moreover, when the District Collector, Madurai forwarded the petition sent earlier by the members of the Usilampatti Panchayat Union Council containing the charges against the Chairman Mr.T.R.Paulpandi demanding no confidence motion against him under Section 212 of the Act, the third respondent initiated proceedings under the said section by convening a meeting of the Panchayat Union Council on 9.1.2013 at 12.00 noon and communicated the same to the Chairman and other members of the panchayat on 28.12.2012. Aggrieved by the said notice dated 28.12.2012, Mr.T.R.Paulpandi filed W.P.(MD) No.373 of 2013 to quash the same. This Court, by order dated 8.1.2013, passed an order of stay of the said notice on the ground that 15 days time was not given to the Chairman by invoking Section

212(5) of the Act. In view of the order of stay granted by this Court, the Revenue Divisional Officer cancelled the said notice dated 28.12.2012. Again the Revenue Divisional Officer rejected the petition given by the panchayat union councillors vide his letter dated 8.1.2013 stating that the procedure has not been followed under Section 212(2) of the Act, which stipulates that any petition containing charges against the Chairman with the intention to move a no confidence motion should be submitted before the Revenue Divisional Officer at least by two members of the council. On the basis of the stand taken by the Revenue Divisional Officer in his proceedings dated 8.1.2013, W.P.(MD) No.373 of 2013 was dismissed as infructuous by this Court on 29.1.2013.

7. Only thereafter, the 11 members of the panchayat union council, out of 13 members, again appeared before the Revenue Divisional Officer on 4.2.2013 with a request to take similar action. In view of that, the Chairman of Usilampatti Panchayat Union was requested to submit his reply to the charges on 4.2.2013 and accordingly the Chairman submitted his reply before the third respondent on 25.2.2013. Thereafter, the third respondent issued a notice dated 2.3.2013 to the Chairman and other members of Usilampatti Panchayat Union with a request to attend the meeting scheduled to be held on 28.3.2013, to decide the issue of no confidence motion against the Chairman of Usilampatti Panchayat Union. In the meanwhile, the Chairman of Usilampatti Panchayat Union also filed W.P.(MD)No.4681 of 2013 seeking to quash the notice dated 2.3.2013 with a consequential direction to the respondents to pass appropriate orders on his petitions dated 28.12.2012 and 26.2.2013 given under Section 204(4) of the Act. The said writ petition was admitted, however, this Court declined to grant interim stay of operation of the notice dated 2.3.2013. But the third respondent conducted the meeting for no confidence motion on 28.3.2013 and even though the Chairman Mr.T.R.Paulpandi and one Mrs.M.Petchiammal, Councillor of Ward No.11, raised objections to conduct the said meeting on the ground that the writ petition filed by the Chairman was pending before the High Court, the third respondent refused to hear them and thereafter started the proceedings as per his notice and read out the charges against the Chairman and also the reply given by him and thereupon, the third respondent asked all the councillors as to whether they accepted the reply given by the Chairman or not. In reply, the councillors also gave their reply

stating that they were not satisfied with the reply given by the Chairman. Only thereafter, the third respondent recorded the same in the minutes book and moved the no confidence motion by informing the councillors that they can show of their hands, if they oppose or support the no confidence motion. Thereafter, since all the 11 councillors had shown their hands in support of the no confidence motion, subsequently, the third respondent came to the conclusion that the no confidence motion against the Chairman had been duly passed and based on the same, he sent the minutes along with the motion to the first respondent for notifying the removal. Thereafter, on perusal of the proposal sent by the third respondent and after noting down the discrepancies shown in the impugned order, the first respondent set aside the proceedings of the third respondent in its entirety. On this basis, he prayed for dismissal of the writ petition.

8. This Court finds full force in the submissions made by the learned Additional Advocate General for the respondents. The reason being that when the W.P.(MD) No.4681 of 2013 filed by the Chairman of Usilampatti Panchayat Union Council challenging the notice dated 2.3.2013 was admittedly pending before this Court, even though order of stay was declined, the third respondent-Revenue Divisional Officer should not have proceeded to conduct the meeting on 28.3.2013 and should not have forwarded the proposal to the Government to take action under Section 212(13) of the Act on the wrong information furnished by the Head Assistant of the third respondent's office that the writ petition was dismissed at the admission stage. The said approach adopted by the third respondent shows his total non-application of mind and also the hurried manner in which the meeting of no confidence motion had been conducted, in spite of the objections raised by the Chairman Mr.T.R.Paulpandi and the other councillor of Ward No.11 Mrs.Petchiammal. It must be also kept in mind that the very same Chairman had earlier filed W.P.(MD) No.373 of 2013 before this Court challenging the earlier notice of no confidence motion and this Court, accepting the case of the Chairman, quashed the notice on the ground that 15 days clear time was not given before the meeting to the parties. Therefore, in my considered opinion, the third respondent should not have convened the meeting and instead should have waited for the outcome of the writ petition pending before this Court. On this sole ground, the writ petition is liable to be dismissed. Besides, as the entire report of

the third respondent was based on the wrong information furnished by the official of his office for passing the no confidence motion against the Chairman of Usilampatti Panchayat Union Council, the first respondent- Government, after examining the report of the Revenue Divisional Officer in detail, pointed out the various discrepancies, on the basis of the opinion given by the learned Advocate General, and ultimately set aside the proceedings of the third respondent-Revenue Divisional Officer for the discrepancies mentioned in the impugned order. In my considered view, the reasons given by the first respondent in the impugned order for not accepting the report of the third respondent are perfectly in order. Therefore, this Court is not inclined to interfere with the impugned order and accordingly, the writ petition fails and the same is dismissed. Consequently, M.P.(MD) Nos.1 and 2 of 2013 are also dismissed. No costs. ss To 1. The Principal Secretary to Government Rural Development and Panchayat Raj Department Fort St.George Chennai 600 009 2. The District Collector Collectorate Madurai District, Madurai 3. The Revenue Divisional Officer O/o the Revenue Divisional Officer Usilampatti Post Madurai District 4. The Commissioner Usilampatti Panchayat Union Usilampatti Post Madurai District

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