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Court : Chennai

Decided On : Nov-08-1976

Reported in : (1977)2MLJ117

Appellant : Mathu Velu Udayar

Respondent : The State of Tamil Nadu, Represented by the Revenue Divisional Officer

Judgement :

A.D. Koshal, J.

1. The petitioner held the office of President of the Porasakurichi Panchayat from some time in the year 1965 to the end of July, 1970. The accounts for that period were scrutinised by the auditors appointed under Section 141 of the Tamil Nadu Panchayats Act. Numerous irregularities were found to have been committed by him and the auditors reported to the Panchayat that he should be burdened with a sum of Rs. 10,185. The matter was referred to the Revenue Divisional Officer, Vridhachalam, who found a sum of Rs.4,718 to be due from the petitioner for the loss caused to the Panchayat by him during his tenure as President of the Panchayat. He issued a certificate under Rule 5(1) of the Rules framed by the Government of Tamil Nadu under Clause (xvi-a) of Sub-Section (2) of Section 178

of the said Act in relation to the power of auditors in the matter of surcharge (hereinafter referred to as the Rules). A copy of his certificate accompanied by that of the reasons in support of the surcharge was furnished to the petitioner on the 2nd of November, 1971. It required him to pay the amount last mentioned within fourteen days from the date of its receipt. It is that certificate by which the petitioner feels aggrieved and which he desires to have quashed by a writ of certiorari.

2. The only contention raised in support of the petition is that the impugned certificate was issued as a result of proceedings with which he was not associated and of which he had no notice and that, therefore, the same is void and of no effect as against him. This contention is wholly without force because of the provisions of Rules 5 to 7 of the Rules which are reproduced below:

5. (1) Any auditor empowered by the Government, may disallow every item contrary to law and surcharge the same on the person making or authorising the making of the illegal payments and may charge against any person responsible therefor the amount of any deficiency, loss or unprofitable outlay incurred by negligence or misconduct of that person or of any sum, which ought to have been, but is not brought to account by that person and shall, in every such case, certify the amount due from such person.

Explanation:--It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his neglience or misconduct the deficiency or loss would not have occurred but for the negligence or misconduct of some other person.

(2) The auditor shall state in writing the reasons for his decision in respect of every disallowance, surcharge or charges, and furnish by registered post, a copy thereof to the person against whom it is made.

(3) If the person to whom a copy of the auditors' decision is so furnished refuses to receive it, he shall nevertheless be deemed to have been duly furnished with a copy of such decision within the meaning of Sub-rule (2). The period of fourteen days fixed in Rules 6 and 7 shall be calculated from the date of such refusal.

6.(1) Any person aggrieved by disallowance, surcharge or charge made, may, within fourteen days after he has received or been served with the-decision of the auditor, either.

(a) Apply to the Principal, Civil Court of Original urisdiction to set aside such disallowance, surcharge or charge and the Court, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surchage or charge with such orders-as to costs as it may think proper in the circumstances; or

(b) in lieu of such application, appeal to the Government. An order passed on such appeal by the Government shall be final.

(2) from any decision of the Court under Clause (a) of Sub-rule (1), an appeal shall lie to the High Court. 'Where an application is made to the Court under Clause (a), the auditor shall be the sole respondent thereto and the applicant shall not be entitled to make either the Government or any other person a party to the proceedings.

7. Every sum certified to be due from any person by the auditor under these rules shall be said by such person into the treasury or the bank in which the funds of the Panchayat Union Council or Panchayat are lodged within fourteen days after the intimation to him of the decision of the auditor unless within that time; such person has appealed to the Court or to Government against the decision; and such sum, if not paid, or such sum as the Court or the Government, shall declare to be due, shall be recoverable on an application made by the Collector of the district in the case of Panchayat Union Councils, and Divisional Panchayat Officer in the case of Panchayats to the Court in the same way as an amount decreed by the Court.

3. These provisions clearly make out that the certificate issued by the auditor empowered by the Government under Sub-rule (1) of Rule 5 is the first step in the proceedings and that it is only if a person against whom such a certificate is issued wants to challenge the same that further proceedings are to be held and he has to be associated therewith.. These proceedings are envisaged in Rule 6 and have to be initiated by the person concerned within fourteen days of the receipt of the copy of the reasons. for the decision on which the certificate is based. Such a copy was

made available to the petitioner on the 2nd of November, 1971, but instead of availing of either of the remedies vouchsafed to him by Rule 6, rushed to this Court. On his behalf, no reason is put forward as to why he did not choose to avail of those remedies and as to how neither of them would have been an effective remedy. In this view of the matter, I do not see why the petitioner should be granted any relief whatsoever in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Accordingly, the writ petition fails and is dismissed with costs. Counsel's fee Rs. 100.