

A. Thangamuthu Vs. the Director of Rural Development and anr.

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Court : Chennai

Decided On : Feb-10-1997

Reported in : 1997(1)CTC503

Judge : E. Padmanabhan, J.

Acts : Tamil Nadu Panchayat Act, 1994 - Sections 226, 234(2) and 242(2); Tamil Nadu Panchayat Act, 1958 - Sections 165, 173(2) and 178(2)

Appeal No. : W.P. No. 781 of 1988

Appellant : A. Thangamuthu

Respondent : The Director of Rural Development and anr.

Advocate for Def. : M. Govindarajan, Government Adv. for Respondent Nos. 1 and 2

Advocate for Pet/Ap. : Hemalatha, Adv. for ;R. Subramaniam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

E. Padmanabhan, J.

1. The petitioner, Ex-President of Mattaparai Panchayat in challenging the impugned proceedings of the 1st respondent in No. 60310/81/K4-5, dated 26.10.1987 by which an order of sur-charge been passed against him for a sum of Rs. 1335 being the alleged loss caused to the Panchayat.

2. The petitioner states that he was elected as President on 25.7.1970, that he took charge on 2.8.1970 as President and that one Mr. K.S. Muthuswamy was the President of Mattaparai Panchayat till 2.8.1970. During the tenure of office, the said Muthuswamy had auctioned Karuvela trees on 6.7.1970, one Nagalingam was the successful bidder for a sum of Rs. 3560. The Panchayat by resolution dated 13.7.1970 confirmed the auction in favour of the said Nagalingam, who remitted Rs. 890 only. The balance amount of Rs. 2670 had not been collected as seen from the Audit report for the year 1970-71. According to the petitioner, the 2nd respondent sought to issue surcharge proceedings against the petitioner for a sum of Rs. 1335 representing 50% of the loss caused to the Panchayat by non-collection of the amount from the said Nagalingam. It is also pointed out that on the earlier occasion, the 2nd respondent had passed orders of surcharge against the said Muthuswamy on 16.8.1979 in his R.C.No. 12090 of 1976. It is further alleged that the 2nd respondent had not enforced the said sur-charge certificate issued by him and thereafter, impugned action was initiated against him. The 2nd respondent issued surcharge proceedings for the recovery of Rs. 1335 from the petitioner by proceedings dated 31.3.1981. As against the same, he preferred appeal before the 1st respondent. By proceedings dated 26.10.1987 the 1st respondent had rejected the appeal preferred by the petitioner. Being aggrieved, the present Writ petition has been filed by the petitioner seeking to quash the surcharge proceedings passed against him by the 2nd respondent, and as affirmed by the 1st respondent.

3. The learned counsel Mrs. Hemalatha, appearing for the Writ Petitioner raised two contentions viz., 1) the 2nd respondent having rightly initiated sur-charge proceedings against the former president, for the very same sum ought not to have initiated proceedings against the Writ Petitioner as such belated action is arbitrary and uncalled for; 2) In terms of Section 173 of the Tamil Nadu Panchayat Act, 1958, action should be taken within a period of 3 years. In other words, the

plea of limitation has been raised by the learned counsel for the petitioner. The respondents have not filed counter I movie Section 17 has no application all an the petitioner's counsel cannot rely upon Section 173 of the Act. The said provision provides for recovery from the President and every member for loss, waste or misapplication of any money or other property owned by or vested in Panchayat or for neglect or misconduct by institution of a suit. Sub-section 2 of Section 173 prescribes the period of limitation for institution of such a suit as 3 years. So, the reliance placed on Section 173(2) cannot be sustained. In terms of Clause (xvi-a) of Sub-section 2 of Section 178 Surcharge Rules have been framed. The entire proceedings by the 2nd respondent has been initiated under the said rules. The appeal has also been rejected by the 1st respondent under the said rules. The 2nd respondent has exercised the powers conferred under Sub-charge disallowance Rules.

4. Natarajan, J. as he then was, in *Sahadevan v. Muthuraj*, : (1975)2MLJ122 , had occasion to consider the very same provisions relating to surcharge proceedings, and has held that 'no time limit is prescribed under the Act for audit proceedings being taken or completed. It is, therefore, clear that Section 173 has no application to surcharge proceedings and recovery of amounts thereunder and consequently, the period of limitation prescribed under Section 173 cannot have application to audit proceedings.'

5. As already held Section 173 has no application and so also Section 165 to surcharge proceedings initiated under Surcharge Rules.

6. In exercise of powers conferred under Section 178(xvi- a), Government had framed rules which came into force on 2nd September, 1964. Rule 1 thereof provides that the Commissioner of Panchayat Union Council or the Executive Authority of a Panchayat shall submit all accounts to auditors appointed under Section 141 of the Act as required by the auditors. Rule 2 enumerates the powers of the auditors. Rules 3 and 5 touch upon the duty of the auditors. Under rule 3, the auditors shall report to the concerned Panchayat or Panchayat Union Council any material impropriety or irregularity which they may observe in the expenditure or in the recovery of monies due to the public body. They should also report on

any loss, waste or misapplication of monies or other property if such loss, waste or misapplication is a direct consequence of his neglect or misconduct with the names or persons directly or indirectly responsible for such loss, waste or misapplication. Rule 5 provides that any auditor empowered by the Government under Section 141 of the Act 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, with the amount of any deficiency, loss or unprofitable outlay incurred by the 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. The Explanation to rule 5 reads thus:-

'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 negligence or misconduct, the deficiency or loss would not have occurred but for the negligence or misconduct of some other person.'

The appeal also provided for which appeal remedy the Writ Petitioner had exhausted.

7. A Division Bench of this Court in Chinnappa Asari v. Divisional Panchayat Officers, : (1977)1MLJ328 while affirming the decision of Natrajan, J. in Sahadevan v. Muthuraj, : (1975)2MLJ122 has laid down as follows:-

'No doubt, sections 173 and 175 of Act XXXV of 1958 apparently do overlap in the matter of the period of limitation for recovery of monies which are the subject-matter of misapplication, loss or waste due to some overt or covert act on the part of any person connected with the Panchayat. Whilst Section 173 deals with the liability of the President, the Executive Authority and the members of the Panchayat for such waste or misapplication of Panchayat Properties, Section 165 is general in scope and deals with an action against any person from whom the Panchayat could recover monies due to it. Of course, Section 165 also speaks of the period within which a prosecution could also be laid against a person in connection with violation of any of the Rules, by-laws, regulations, ect, or non-payment of any tax or any sum due to the Panchayat or Panchayat Union Council.

We are unable to appreciate the contention of the learned counsel for the appellant that in a case where proceedings are initiated under a special and an express procedure provide for in the very same statute, the general provisions referred to in Sections 173 and 165, though the former is somewhat special in nature, would exclude the operation of such a special procedure. It cannot be gainsaid that the rule making power under Section 178 includes the framing of rules in connection with the powers of the auditors to surcharge items, etc. The Auditors referred to in Section 178 and in the other provisions of the Act have a special meaning since Section 141 of the Act refers to the appointment of such auditors. Section 141 provides:-

' The Government shall appoint auditors of the accounts of the receipts and expenditure of the funds of the Panchayat Union Council and of the Panchayat. Such Auditors shall be deemed to be 'public servants' within the meaning of Section 21 of the Indian Penal Code.'

Therefore, it follows that when Section 178(2)(xvi-a) contemplated the making of rules in connection with the powers of auditors to disallow and surcharge items and for recovery of sums so disallowed or surcharged, then it cannot be said that such amounts so disallowed or surcharged by the auditors would be amounts which have to be accounted for by the named Officer under Section 173 or by any other person under Section 165 of the Act. The special excludes the general, is a well known principle.'

The view of Natarajan, J. was affirmed by the Division Bench. Hence, the contention that the surcharge proceedings are belated and barred under Section 173 of the Act is unsustainable and it stands rejected.

8. The second contention that there would be no surcharge against the petitioner as for the very same amount already surcharge proceedings had been initiated against the former President Muthuswamy. This contention is factually misconceived. The 2nd respondent in his proceedings had made it clear that surcharge proceedings have been initiated against the writ petitioner as well as the former president Muthuswamy and each of them have been held liable for 50% each. The surcharge order makes it clear that the petitioner is liable to make good

one half of the loss and the other by the former president Muthuswamy. Thus, this contention also fails.

9. In the circumstances, the writ petition fails and is dismissed with costs, Rs. 500.

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