

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8-4-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.10108 of 2015
and
M.P.Nos.1 and 2 of 2015

G.Padmavathi

.. Petitioner

vs

- 1.The District Collector/
Inspector of Panchayat
Thiruppur
- 2.The Block Development Officer
Udumalpet, Thiruppur District.
- 3.The Panchayat President
Anthiyur Panchayat
Udumalpet Taluk
Thiruppur District

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned order dated 2.3.2015, in his proceedings in Na.Ka.No.776/2015/A1 issued by the first respondent and quashing the same.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.V.Subbiah
Special Government Pleader
for R1
Mr.V.R.Kamalanathan
Additional Government Pleader
for R2

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner is the Vice-President of Anthiyur Panchayat, Thiruppur District. According to the petitioner, on behalf of the third respondent, her husband was carrying on his official duties and when it was brought to the knowledge of the respondents 1 and 2, the second respondent vide proceedings dated 20.9.2014, directed the husband of the third respondent not to interfere with the administration of the Panchayat, and the third respondent, infuriated by the act of the second respondent and without any proper notice to the petitioner, convinced the respondents 1 and 2 to convene an emergent meeting on 11.2.2014, wherein a resolution came to be passed to remove the cheque signing

power of the petitioner, and challenging the legality of the said proceedings, she has filed this writ petition.

3.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to the impugned order dated 2.3.2015, passed by the first respondent, and would submit that the said order is in gross violation of the decision of the First Bench of this Court reported in 2005 (1) CTC 545 [PUGAZHENDRAN V. B.G. BALU AND OTHERS] and the order of this Court dated 27.4.2009, made in W.P. (MD) No.101 of 2009, reported in CDJ 2010 MHC 621 [R.THALAIMAN V. INSPECTOR OF PANCHAYATS-CUM-DISTRICT COLLECTOR AND OTHERS], and prays for interference.

4.Per contra, Mr.V.Subbiah, learned Special Government Pleader, who accepted notice on behalf of the first respondent, would submit that the first respondent, after following the due process of law, has rightly passed the impugned order and prays for dismissal of the writ petition.

5.The Court heard Mr.V.R.Kamalanathan, learned Additional Government Pleader, who accepted notice for the second respondent, also.

6.This Court, after considering the rival submissions, is of the view that the impugned order is liable to be set aside and the matter be remanded to the first respondent once again for fresh adjudication in the light of the above cited decisions.

7.The Hon'ble First Bench of this Court in the decision reported in 2005 (1) CTC 545 and cited supra, has held as follows:-

"26.In our opinion, if the Vice-President (or President, as the case may be) by his conduct makes it impossible for the village panchayat to function (either by neglecting his duties or by causing regular obstruction in the administration or otherwise) he may be said to be 'absent'. Such interpretation of the word 'absence' in Section 188(3) would be taking a practical view otherwise the Vice-President (or President, as the case may be) if he has adversarial relationship with the Vice-President (or President as the case may be) can make it very difficult for the Village panchayat to function by his simple act of refusing to sign cheques. Funds are often required for various purposes and if the President or Vice-President refuses to sign cheques for ulterior motives, as is the allegation in the counter affidavit in this case, the functioning of the village panchayat may become impossible. We are not expressing any opinion as to whether in this case, the Vice-President has refused to sign for some ulterior motives, but we are certainly of the opinion that Section 188(3) of the Act, as well as G.O.Ms.No.92 dated 26.03.1997 can be read

harmoniously in the manner mentioned above. We do not agree with the learned single Judge that if the Vice-President (or President, as the case may be) refuses to sign it can never be a case of 'absence' within the meaning of the word in Section 188(3) of the Act, and the only recourse which can be taken to is under Section 206. It may be noted that Section 206(2) of the Act states that before removing the Vice-President the procedure mentioned in sub-sections (2) to (13) of Section 205 has to be complied with, and that procedure is a cumbersome, time consuming one. Surely for signing every cheque it would be impracticable to resort to that procedure. If the conclusion of the learned single Judge that for refusal to sign cheques action could be taken under Section 206(3) of the Act for removal of the Vice President (or President, as the case may be) the time bound programmes like Village Panchayat, ear-marked grant account like Sampoorna Grama Yojgas Yojana Scheme (Food for work), Village Panchayat Scheme Fund Account, etc. will lapse if the funds are not utilized within the time stipulated, since the procedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome.

27. We would however point out that before granting prior approval it would be the duty of the Inspector of Panchayats (District Collector) to give a hearing to the Vice-President or (President, as the case may be) (which need not be a personal hearing as already mentioned above), and apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice-President (or President, as the case may be) is refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of Panchayats, to decide this matter objectively and impartially without being influenced by any extraneous pressures or considerations. If the refusal to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspector should refuse approval, but if it is for extraneous considerations or is mala fide he should grant it.

....

29. In the present case a perusal of the order of the District Collector, Vellore (Inspector of Panchayats, Vellore) dated 7.11.2002 cancelling the power of the Vice-President to sign the panchayat's cheques as joint signatory, shows that the District Collector has merely acted on the recommendation of the Block Development Officer, Katpadi Panchayat Union, and he has not

applied his mind independently to the facts of the case, and he has not come to any independent conclusion that the refusal to sign cheques by the Vice President was mala fide or for ulterior motives. The District Collector, Vellore without issuing notice to the petitioner, appears to have mechanically accepted the report of the Block Development Officer, Katpadi Panchayat Union, which in our opinion was not proper.

....
31. The District Collector, Vellore should have given a show cause notice and an opportunity of hearing to the Vice-President (which need not have been a personal hearing as already stated above), and after considering the explanation and other materials submitted by the Vice-President, he should have applied his mind independently and in a fair and impartial manner, and should have recorded his own reasons in the order he passed. Since that does not appear to have been done in the order of the District Collector, Vellore dated 7.11.2002, in our opinion, the said order was rightly quashed. The matter is remanded to the District Collector, Vellore to pass a fresh order after giving an opportunity of hearing to the Vice President and President of the Panchayat, and others concerned, and after recording his reasons. This should be done very expeditiously by the District Collector, Vellore."

8. Similar view has been taken by the Single Bench of this Court in the decision reported in CDJ 2010 MHC 621 and cited above.

9. In the result, the writ petition is allowed and the impugned order dated 2.3.2015, passed by the first respondent, is set aside and the matter is remanded to the first respondent, who shall follow the principles of natural justice as enunciated in the above cited decisions, and pass fresh orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To:

1. The District Collector/
Inspector of Panchayat
Thiruppur

2.The Block Development Officer
Udumalpet, Thiruppur District.

3.The Panchayat President
Anthiyur Panchayat
Udumalpet Taluk
Thiruppur District

+1 cc to Government Pleader,SR.19688

+1 cc to Mr.r.nalliyappan, Advocate,SR.19325

+1 cc to Mr.V.R.Kamalanathan, Advocate,SR.19620.

skv(co)
krd 23/4

W.P.No.10108 of 2015



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