

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

Date of Reserving the Orders	Date of Pronouncing the Orders
12.02.2015	03.03.2015

CORAM

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. Nos. 21687 & 24075 of 2014

W.P.No.21687 of 2014

P.K.Suresh

....Petitioner

Vs

1. The District Collector/Inspector of Village Panchayats Thiruvannamalai District, Thiruvannamalai.
2. The Block Development Officer Thiruvannamalai Panchayat Union, Thiruvannamalai District.

3.K.Saravanan
4.M.Vadivel
5.A.Devarajan
6.K.Ravi
7.K.Elumalai
8.G.Vethavalli
9.P.Srinivasan
10.Vennila
11.S.Manjula
12.S.Geetha

.... Respondents

(R5 to R12 impleaded as per order dated 13.1.15 by this court MP 4/14 is in WP 21687/14)

W.P.No.24075 of 2014

K.Saravanan

... Petitioner

Vs

1. The District Collector/Inspector of
Village Panchayats
Thiruvannamalai District,
Thiruvannamalai.

2. The Block Development Officer(Village Panchayat)
Thiruvannamalai Panchayat Union,
Thiruvannamalai District.

3.P.K.Suresh

... Respondents

Prayer in W.P.No.21687 of 2014 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records relating to the impugned order dated 25.07.2014, Ref.Na.Ka.No.642/2014/A, passed the first respondent and quash the same.

Prayer in W.P.No.24075 of 2014 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the first respondent in his proceedings Na.Ka.No.A2/642/2014/U.E.(Uo), dated 27.08.2014, quash the same.

For petitioner : Mr.V.Subbarayan in W.P.No.24075/14

Mr.S.Thankasivan in W.P.No.21687/14

For Respondents : Mr.V.Jayaprakash Narayanan Spl.G.P.
for RR1and R2 in W.P.No.24075 of 2014
and W.P.No.21687 of 2014

Mr.S.Thankasivan for R3
in W.P.No.24075 of 2014

Mr.V.Sudhakar for R3 in
W.P.No.21687 of 2014

Mr.V.Subbarayan for R5 to R12 in
W.P.No.21687 of 2014

C O M M O N O R D E R

The petitioner in W.P.No.21687 of 2014 is the elected Vice President of the Vengikal village Panchayat, Tiruvannamalai District and he has sought for issuance of a Writ of Certiorari, to quash the order dated 25.07.2014, by which the cheque signing power of the petitioner as a co-signatory to the panchayat cheques along with the President of the village Panchayat, was temporarily suspended.

2. The petitioner in W.P.No.24075 of 2014 is President of the said village Panchayat and he has sought for issuance of a Writ of Certiorari, to quash the order passed by the District Collector, Tiruvannamalai, dated 27.08.2014, revoking the order dated 25.07.2014 (impugned in W.P.No.21687 of 2014) on the ground that this Court has granted an order of interim stay in the Writ Petition filed challenging the said order.

3. The result of the Writ Petition in W.P.No.24075 of 2014, would depend upon the result in W.P.No.21687 of 2014 and therefore, it would suffice to refer to the facts mentioned in the said Writ Petition.

4. The petitioner, Vice President of the village Panchayat submitted that he has been signing the cheques along with the President and before signing, he always used to question the correctness of the cheque amount, so that the funds of the Panchayat are safeguarded. It is submitted that upto 04.08.2014, the petitioner has been signing the cheques along with the President and the petitioner has produced proof to show that he has been signing the cheques upto August 2014. It is stated that the President of the Panchayat become inimical towards the petitioner, since they belonged to rival political parties and the President mustered support from group of elected Ward Members and passed a resolution to change the cheque signing power from the petitioner in favour of the elected Ward Member from Ward No.1, M.Vadivel. Pursuant thereto, the respondents 1 and 2 have sent report favouring the transfer of cheque signing power to the said Ward Member from the petitioner. The President of the Panchayat filed a Writ Petition before this Court in W.P.No.14798 of 2014, for a direction to consider his representation and to approve the Resolution dated 24.02.2014. Though in the said Writ Petition, the petitioner was impleaded as the third respondent, the Writ Petition was disposed of at the admission stage by taking into consideration the limited prayer, direction was issued to the District Collector to consider the representation after giving

opportunity of hearing to all the parties concerned especially to the petitioner herein who is a necessary party to the proceedings. Pursuant thereto, the first respondent appears to have called the petitioner for an enquiry and according to the petitioner, the enquiry was mere farce and without considering the petitioner's submission that he never refused to sign the cheques, the impugned order was passed and the cheque signing power was divested from the petitioner and entrusted to the fourth respondent. It is stated that the fourth respondent is the neighbour and close friend of the President of the Panchayat.

5. The learned counsel for the petitioner submitted that the impugned order has been passed without referring to the documents and statements given by the petitioner confirming that he has been co-operating for the smooth functioning of the Panchayat and the impugned order is an outcome of non-application of mind that too without assigning any reasons. It is further submitted that the first respondent has failed to verify the records as to whether the petitioner has signed the cheques and the first respondent without conducting such verification, the impugned order could not have been passed. Further, the first respondent relied upon a report of the second respondent, which was not furnished to the petitioner and the contents of the reports were not made known to the petitioner.

6. The learned counsel referred to G.O.Ms.No.92, dated 26.03.1997, and submitted that in terms of clause 5.4 of the said Government Order, no payment will be made unless the work has been duly measured and check measured by the engineers concerned and the bill has been passed by the Assistant Block Development Officer and the President and Vice President of the Panchayat cannot issue a cheque unless these formalities have been completed. It is submitted that the petitioner functioned strictly in accordance with the Government Order and whenever there was a doubt as regards any excess payment, the petitioner immediately questioned the same. Further, it is submitted that the petitioner had lodged a complaint to the second respondent stating that threat has been meted out to him and based on the complaint, the second respondent caused a notice on 04.02.2014, to the President of the Panchayat and the Secretary calling upon them to attend the enquiry on 14.02.2014. It is submitted that without reference to any of these proceedings, the impugned order has been passed.

7. The learned counsel appearing for the respondents while seeking to sustain the impugned order submitted that the Panchayat passed resolution unanimously and taking note of all the factors, the

first respondent bearing in mind that the affairs of the Panchayat has to be carried on in an effective and smooth manner, passed the impugned order. Further, it is submitted that enquiry was duly conducted with due notice and participation of every member was duly recorded.

8. The learned counsel appearing for the President of the Panchayat submitted that merely because the petitioner made a statement during enquiry that he is co-operating with the President for signing the cheques of the Panchayat, cannot be a ground to set aside the impugned order and from the resolution passed on 24.02.2014, it is clear that the petitioner was not co-operating, as a result of which 18 overhead tanks, 93 mini overhead tanks and 1485 street lights could not be maintained for want of funds. Copies of four cheques, which are said to have not signed by the Writ Petitioner filed in the typed set of papers, along with the statements given by the Nine Ward Members.

9. Heard the learned counsels appearing on either side and perused the materials placed on record.

10. The procedure to be adopted by the President and the Members of the Panchayat as well as the Inspector of Panchayat in divesting the Vice President's power to be a co-signatory of the Panchayat's cheques came up for consideration before the Hon'ble First Bench of this Court in the case of Pugazhendran vs. B.G.Balu in W.A.No.1799 of 2004, dated 28.01.2005. The controversy in the said case was regarding the interpretation of Section 188(3) of the Tamil Nadu Panchayats, 1994, (hereinafter referred to as 'Act'). In terms of Sub-section (3) of Section 188 of the Act, all cheques for payment from the Village Panchayat Fund or other funds constituted under sub-section (2) have to be signed jointly by the President and Vice President and in the absence of the President or Vice President, as the case may be, by the Vice-President or President and another member authorised by the village panchayat at a meeting in this behalf. The question which was considered by the Hon'ble First Bench was if the President or Vice President refuses to sign a cheque, whether it should be treated as 'absence' within the meaning of the word in Section 188(3) of the Act. To deal with such situation G.O.Ms.No.92, dated 26.03.1997, was issued by the Government of Tamil Nadu. The Hon'ble First Bench referred to the facts in another Writ Petition, where the Vice President alleged that the President of the Village Panchayat is doing several acts detrimental to the interest of the Panchayat and he misused his power to the extent possible. It is further stated that the President of the Village Panchayat got a resolution passed to the effect that the

powers of the Vice President to sign the cheque should be cancelled and such power should be given to another member. Pursuant to which, recommendation was made by the Block Development Officer and the District Collector passed an order cancelling the cheque signing power of the Vice President and granting it in favour of one other member. This order was put to challenge as being violative of Section 188(3) of the Act. The District Collector sought to sustain the order stating that it is in tune with G.O.Ms.No.92, dated 26.03.1997, as well as with Section 188(3) of the Act. The learned Single Judge allowed the Writ petition holding that if the Vice President refuses to sign the cheque, then action should have been taken against him either under Section 203 or under Section 206 of the Act. The Hon'ble First Bench agreed the view taken by the learned Single Judge holding that before granting approval to the resolution of the Village Panchayat authorising any other member to operate the account along with the President, as provided by G.O.Ms.No.92, the Inspector of Panchayat has to give a notice to the Vice President and an opportunity of hearing and such hearing need not be a personal hearing and he can only be given a show cause notice asking him to give reply to the allegations in the show cause notice within a reasonable time and such procedure would comply with the principles of natural justice. On examining the facts of the said case, the Hon'ble First Bench was satisfied that there was violation of principles of natural justice, inasmuch as no notice was given by the District Collector prior to passing the order.

11. Further, it was pointed out that before granting prior approval, it would be the duty of the District Collector to give a hearing to the Vice President, which need not be a personal hearing and apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice President or the 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. Further, it was pointed out that 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 District Collector should refuse approval, but if it is for extraneous considerations or is mala fide he should grant it.

12. In the instant case, the factual position has been set out in the preceding paragraphs. The complaint given by the Vice President against the President was the first complaint being dated 03.02.2014. The said complaint was enquired into and a notice was

issued on 04.02.2014, by the Block Development Officer. It is not known as to what action the District Collector had taken on such complaint, pursuant to such enquiry conducted by the Block Development Officer. It is thereafter the resolution was passed by the President and Members resolving to cancel the cheque signing power of the Vice President/petitioner and the same was forwarded to the District Collector. Since no action was taken, the President filed a Writ Petition before this Court in W.P.No.14798 of 2014, wherein a direction was issued on 09.06.2014, to consider the representation and pass orders after giving opportunity of hearing to all the parties concerned especially the Vice President/petitioner who is the necessary party to the proceedings and orders were directed to be passed on merits and in accordance with law. Pursuant thereto, an opportunity of personal hearing was given to the petitioner in which he has given statement and also produced copies of the cheques, which have been signed by him as well as the President. However, on a perusal of the impugned order, it is evidently clear that except for referring to the facts and the direction issued in W.P.No.14798 of 2014, the District Collector has not assigned any independent reasons to cancel the cheque signing power of the Vice President/petitioner, the impugned order is a non-speaking order does not reflect any objective examination of the cause shown by the Vice President. Therefore, it is clear that the impugned order is arbitrary and unreasonable and liable to be set aside in the light of the decision of the Hon'ble First Bench of this Court in the case of Pugazhendran vs. B.G.Balu in W.A.No.1799 of 2004, dated 28.01.2005.

13. For all the above reasons, the petitioner in W.P.No.21687 of 2014, is entitled to succeed and accordingly, the said Writ Petition is allowed and the impugned order is quashed. Consequently, the prayer sought for in W.P.No.24075 of 2014 filed by the President of the Panchayat is rejected and the said Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

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Sub Asst. Registrar.

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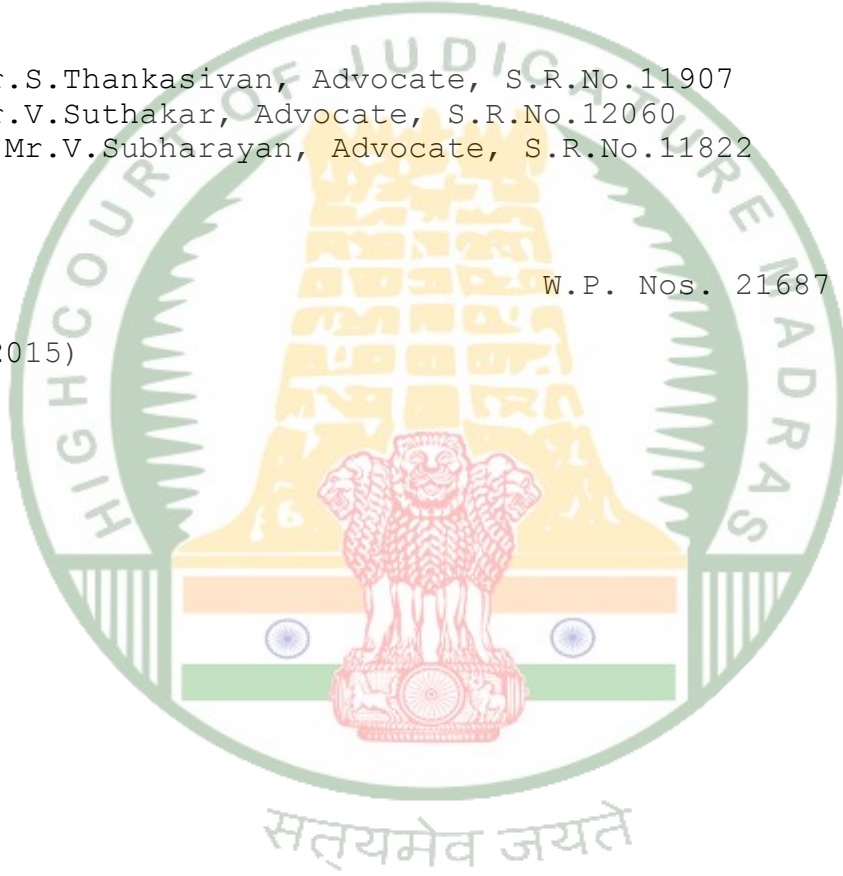
To

1. The District Collector/Inspector of
Village Panchayats
Thiruvannamalai District,
Thiruvannamalai.
2. The Block Development Officer
Thiruvannamalai Panchayat Union,
Thiruvannamalai District.

+1cc to Mr.S.Thankasivan, Advocate, S.R.No.11907
+1cc to Mr.V.Suthakar, Advocate, S.R.No.12060
+2cc's to Mr.V.Subharayan, Advocate, S.R.No.11822

W.P. Nos. 21687 & 24075 of 2014

SCD(CO)
CA(10/03/2015)



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