

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.19609 of 2014
and
M.P.Nos.1 and 2 of 2014

J.Saraswathi
W/o.Jayavel G.Mookanur Patti Village
R. Gopinathampatti Post
Morappur Panchayat Union
Harur Taluk Dharmapuri District.

...Petitioner

Vs

- 1 The Inspector of Panchayat
The District Collector Dharmapuri District
Dharmapuri.
- 2 The Block Development Officer
Morappur Panchayat Union Morappur
Harur Taluk Dharmapuri District.
- 3 G.K.Ramachandran @ Kannappan
President of R.Gopinathampatti Village
Panchayat Morappur Panchayat Union
Harur Taluk Dharmapuri District.
- 4 Kumar
VI Ward Member R.Gopinathampatti
Village Panchayat Morappur Panchayat Union
Harur Taluk
Dharmapuri District.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of writ of mandamus forbearing the respondents from authorize the 4th respondent to sign the cheque of 3rd respondent in his place and consequently direct the respondents 1 to 3 to permit him to sign in the Panchayat Cheques of President of R.Gopinathampatti Panchayat Morappur Union Harur Taluk Dharmapuri District forthwith.

For petitioner : Mr. M.R. Elavarasan

For respondents : Mr. R.A.S. Senthilvel, AGP

ORDER

Heard Mr.M.R. Elavarasan, learned counsel for the petitioner and Mr.R.A.S. Senthilvel, learned Additional Government Pleader for the respondents. Perused the materials filed in support of the petition and also the counter affidavit filed by the learned Additional Government Pleader.

2. The petitioner has filed this writ petition seeking for a writ of mandamus forbearing the respondents from authorizing the fourth respondent to sign the cheque of 3rd respondent in his place and consequently direct the respondents 1 to 3 to permit him to sign in the Panchayat Cheques of President of R.Gopinathampatti Panchayat Morappur Union Harur Taluk Dharmapuri District forthwith.

3. The facts of the case in brief are that the petitioner was elected as Vice President of R. Gopinathampatti Village Panchayat during October 2011. According to the petitioner, the President of the Village Panchayat has committed several irregularities and as a result of which the petitioner had to point out the same to the Ponneri Panchayat President and hence the petitioner refused to sign the cheques since the cheques which were given by the President were unfilled blank cheques forcing the petitioner to sign unfilled cheques and documents as per his whims and fancies. In the typed set of papers copy of the undersigned blank cheque bearing No.414497 drawn on Pallavan Grama Bank has been enclosed. In the background of these facts, without issuing any notice to the petitioner on the allegation that the petitioner is refusing to sign the Panchayat, the said power has been assigned to the fifth Ward Member viz., Ramalingam. After the demise of the said Ramalingam on 05-06-2014, the petitioner has requested the cheque signing power to be restored in his name.

4. When the case came up for hearing on the previous occasion, this Court directed the learned Additional Government Pleader to get instructions as to whether any notice was issued or whether any procedure was followed by the District Collector, the first respondent herein, divesting the petitioner from the cheque signing power. Further this Court directed the original files to be produced before this Court. On a perusal of the files it is seen that the cheque signing power has been divested from the petitioner

without issuing any notice and without affording any opportunity to the petitioner. In fact, this question was considered by this Court in the case of P.K. Suresh Vs. The District Collector/Inspector of Panchayats in W.P.No.21687 and 24075 of 2014 wherein the order divesting the cheque signing power of the President was quashed. The said decision was rendered following the decision of the Honourable Division Bench. At this stage it is worthwhile to quote the relevant paragraph of the said judgment:

"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."

5. As noticed above, the files do not disclose that any notice was issued to the petitioner nor the District Collector has taken a stand in the counter affidavit. In fact on a perusal of the files, the learned Additional Government Pleader also is not able to show that any notice was issued to the petitioner and an opportunity was afforded. Hence it is held that divesting of the power is unsustainable in law.

6. The writ petition is allowed and the respondent is directed to restore the cheque signing power in favour of the petitioner. Further it is open to the first respondent to issue fresh notice and proceed against the petitioner, if the first respondent is of the opinion that the same is warranted. No costs.

The connected M.Ps. are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

glp

To

- 1 Inspector of Panchayat
District Collector , Thiruvannamalai
Tamilnadu
- 2 The Block Development Officer
Morappur Panchayat Union, Morappur
Harur Taluk Dharmapuri District.

1 CC to Mr.K.Balu, Advocate SR.No. 16223

1 CC to the Government Pleader, SR.No. 16991

KJI (CO)
PSI (07.04.2015)

W.P.No.19609 of 2014
and M.P.Nos.1 and 2 of 2014

सत्यमेव जयते

WEB COPY