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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2015

CORAM

THE HONOURABLE **MR. JUSTICE R. SUBBIAH**

W.P(MD) .No.15319 of 2015
and M.P(MD) Nos.1 to 3 of 2015

C.Ponnusamy,
President,
Pandavarmangalam Panchayat,
Kovilpatti Panchayat Union,
Thoothukudi District.

...Petitioner

Vs.

1.The District Collector -cum-Inspector of Panchayats,
Thoothukudi District, Thoothukudi.

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

...Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records on the file of the first respondent in connection with the impugned order passed in his proceedings in Na.Ka.No.Ooni5/0422/2014, dated 24.02.2014 and quash the same as illegal and ultravires.

For petitioner

: Mr.G.Vaigundhu for
Mr.G.Thalaimutharasu

For R-1

: Mr.M.Rajarajan,
Government Advocate takes notice

For R-2

: Mr.V.Muruganantham,
Additional Government Pleader takes notice

ORDER

The Writ Petition has been filed praying for a Writ of Certiorari to call for the records on the file of the first respondent in connection with the impugned order passed in his proceedings in Na.Ka.No.Ooni5/0422/2014, dated 24.02.2014 and quash the same as illegal and ultravires.

2. Mr.M.Rajarajan, learned Government Advocate takes notice for the first respondent and Mr.V.Muruganantham, learned Additional Government Pleader takes notice for R2.

<https://hcservices.ecourts.gov.in/hcservices/> In the present, this Writ Petition itself is taken up for final disposal.



4. The case of the petitioner is that the petitioner has been duly elected as the President of Pandavarmangalam Panchayat and right from the date of assuming office, he has discharged his duties with devotion and in the interest of villagers. While that being so, since the Vice President namely Mr.M.Santhanapandi was acting detriment to the interest of panchayat, his cheque signing power was withdrawn by the first respondent on 24.02.2014 and entrusted to another Ward Member namely J.Kalaiarasi. Hence, the said Santhanapandi started to make false complaint against the petitioner and also filed W.P(MD)No.12724 of 2015 seeking a direction to consider the representation made against the petitioner. When that being the position, the first respondent based on the alleged complaint from the panchayat members issued impugned show-cause notice after getting report from the Assistant Director of Panchayat and Block Development Officer. Before calling for report from the Assistant Director, no preliminary enquiry was conducted by giving opportunity to the petitioner. Based on the report seven counts of charges were framed against the petitioner. It is further averred that the panchayat is having banking operation insofar as payments related to various schemes. All the cheques of the panchayat are jointly signed by the President of panchayat and its vice president. The vice president is now replaced with the Ward member. Hence, the cheques are being presented with the joint signature of the petitioner as well as the Ward Member. Now at the time of presenting cheques, the bank is insisting for a letter of acknowledgment of the second respondent. Normally, the acknowledgment of the second respondent is not required while at the time of presentation of cheque. When that being the position, when the petitioner presented the cheque bearing No.114728, the bank returned the same stating that the second respondent orally instructed them not to accept the same. Therefore, the petitioner filed W.P(MD)No.14591 of 2015 to forbear the respondents from curtailing the cheque signing power. When the matter came up on 19.08.2015, the proceedings of the first respondent made in Na.Ka.No.Ooni5/0422/2014, dated 24.02.2014 (the order impugned in this Writ Petition) addressed to the second respondent was produced, wherein the first respondent has directed the second respondent to verify the claim and thereafter forward the cheque along with authorization letter. In view of the same the said Writ Petition was withdrawn with liberty to challenge the order of the first respondent. Hence, the present Writ Petition has been filed challenging the order of the first respondent. The impugned proceedings is arbitrary and the same has been issued without following due process of law as contemplated under Section 188(3) of the Panchayat Act. Hence, the petitioner has come forward with the Writ Petition for the above stated relief.

5. It is the main submission of the learned counsel for the petitioner that the first respondent neither issued a show cause notice nor followed the procedure contemplated under the Tamil Nadu Panchayats Act, 1994 before passing the impugned order. On the sole ground, the order of the first respondent has no legs to stand.



Therefore, he prayed for quashing the order impugned in this Writ Petition.

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6. The learned Government Advocate was put on notice, who in turn submitted that since the welfare Schemes are one of the important functions of the Panchayat, since seven charges were framed against the petitioner, the first respondent has no other go but to invoke his power under the Panchayat Act by taking away the cheque signing power of the petitioner. Therefore, he prayed for the dismissal of this Writ Petition.

7. I heard the submissions made on either side and perused the materials available on record.

8. A bare perusal of the impugned order would throw light on this Court that nowhere there is a reference that the petitioner was given a show cause notice nor explanation was obtained from the petitioner, before passing the impugned order. Admittedly, based on the report of the Assistant Director of Panchayat, the District Collector has swung into action by taking away the cheque signing power of the petitioner. This was done without giving a show cause notice to the petitioner. Time and again this Court has held that the power to sign cheque is a statutory power conferred on the President and Vice President under sub-section (3) of Section 188 of the Act. The reason for being given financial powers to the Panchayat concerned is that the Constitution and the Panchayat Act wanted to give financial powers to the local body and it was only for the said purpose, the legislature has vested the Executive Authority on the Panchayat. Therefore, the first respondent should be more cautious in exercising his extraordinary power in the matter of this nature.

9. For the foregoing reasons, I have no hesitation to quash the order impugned in this Writ Petition. Accordingly, the impugned order in this Writ Petition stands quashed and this Writ Petition is allowed. Consequently, the first respondent is directed to issue a fresh show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner is directed to give his explanation within a period of one week from the date of the said show cause notice. After doing so, the first respondent shall pass appropriate orders on merits and in accordance with law within a period of three weeks from the date of the explanation of the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar



To

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- 1.The District Collector -cum-Inspector of Panchayats,
Thoothukudi District,
Thoothukudi.
- 2.The Block Development Officer (Village Panchayat),
Kovilpatti Panchayat Union,
Kovilpatti,
Thoothukudi District.

+1cc to Mr.G.Thalaimutharasu, Advocate Sr.No.50769

akm/07.09.2015 /4p-4c/

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31.08.2015