

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7.12.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.25993 of 2016

1. Tamil Nadu Federation of Women
Presidents of Panchayat Government (TNFWPPG)
rep. by its Advisor, N.Chithra
54, LDG Road, Little Mount
Saidapet, Chennai - 15.

2. M.Amul Premavathi
President, Meyyur Panchayat
No.5, Ambedkar Nagar
Meyyur Village, Meyyur Post
Madhuranthagam Block
Kancheepuram District. .. Petitioners

Vs.

1. The State of Tamil Nadu
rep. by its Principal Secretary
Rural Development and
Panchayatraj Department
Fort St. George, Chennai - 9.

2. The Director of Rural Development
and Panchayatraj
Panagal Maaligai, Saidapet
Chennai - 15. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Mandamus forbearing the respondents from in any manner appropriating or otherwise interfering with the financial powers including the cheque signing authority of the Village Panchayat President and Vice-President in the guise of invoking powers under the TNPA 1994 particularly sec. 203 thereof and further direct the respondents to frame Guidelines of facilitate effective functioning of Village Panchayat Presidents and Vice

Presidents to enable them to exercise their Constitutional Powers and functions envisaged under Articles 243A to O and under the Eleventh Schedule of constitution of India.

For Petitioners : Ms.P.Selvi

For Respondents : Mr.T.N.Rajagopalan
Special Govt. Pleader

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioners, the Tamil Nadu Federation of Women Presidents of Panchayat Government (TNFWPPG) and the President, Meyyur Panchayat, have filed the public interest litigation seeking a writ of Mandamus forbearing the respondent authorities from in any manner appointing or otherwise interfering with the financial powers, including the cheque signing authority of the Village Panchayat Presidents and Vice Presidents, under the guise of invoking the power under the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as "the said Act"), more particularly, Section 203 of the said Act. A prayer is also made for directions to the respondents to frame guidelines to facilitate effective functioning of the Village Panchayat Presidents and Vice Presidents to enable them to exercise the constitutional powers.

2. The learned counsel for the petitioners has strenuously contended before us that the Panchayat Raj system is a reflection of the devolution of power which takes place in a democratic polity and the authority of such elected persons cannot be diluted by taking away the financial powers. Her primary contention in this behalf is that Section 203 of the said Act does not envisage the taking away of the cheque signing power and, thus, in a given case when such a power is exercised, it is de hors the provision. The said section reads as under:

"Section 203. Emergency powers of Collector and Inspector:-

Subject to such control as may be prescribed, the Inspector or the Collector may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act which a Panchayat or Executive Authority or Commissioner or Secretary is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the safety of the public and may direct that the expense of executing such work or doing such act shall be paid by the person having

the custody of the Village Panchayat Fund or the Panchayat Union (General) Fund or the District Panchayat (General) Fund in priority to any other charges against such Fund except charges for the service of authorized loans."

3. In order to substantiate her case, she has referred to the view of the learned Single Judge of this Court in Logeswari v. The District Collector, 2013 (2) CTC 846, to contend that the power has to be treated only as an extraordinary power and cannot be exercised in a routine manner to deny the legally elected members of the panchayat from exercising their statutory powers.

4. On the other hand, the learned Special Government Pleader has drawn our attention to the Division Bench judgment of this Court in P.Suganthi v. The District Collector cum Inspector of Panchayats, 2011 (2) CTC 381, where it has been observed that such power does exist, albeit to be used appropriately and the relevant observations are contained in paragraphs (11) and (12) as under:

"11. When the proceedings is initiated as against the President of village related to financial misdeeds, we are of the view that the transferring the cheque signing power from the Village President to Block Development Officer, the Second Respondent is definitely a case of emergency fitting within the provisions of Section 203 of the Act. If the Appellant is allowed to continue to sign the cheques, it would amount to endorse the alleged irregularities committed by the Appellant. Moreover, the transferring of cheque signing power is only an interim arrangement, till the completion of the proceedings initiated as against the Appellant under Section 205 of the Act.

12. The only aspect that has to be seen whether the notice has been issued to the Appellant before transferring the cheque signing power to the Second Respondent, the Block Development Officer. In the instant case, we find that the show cause notice was issued on 31.5.2010 by the District Collector expressing his intention to transfer the cheque signing power from the Appellant to the Second Respondent, the Block Development Officer. The Appellant has also sent a reply to the said show cause notice. Under such circumstances, the case relied upon by the learned Counsel for the Appellant S.Udayakramar v. The District Collector-cum-Inspector of Panchayats, 2009 Writ L.R. 538,

cannot be made applicable for the reason that the facts of that case would show that no notice was issued before passing the impugned order in transferring the cheque signing power."

5. On the need for invoking such emergency provisions, it has been pointed out in the counter affidavit that the District Collector/Inspector of Panchayat was not obliged to use the emergency power as a routine manner, but can intervene in the affairs of the village panchayat where the President indulges in perpetuating financial irregularity.

6. In our view, the matter sought to be raised is not of gender discrimination and the learned counsel for the petitioners concedes that what she seeks to urge is that such cheque signing power should not be withdrawn whether the President is a man or a woman. However, her contention that such a power does not exist under Section 203 of the said Act has already been repelled by the decision of the Division Bench in P.Suganthi case, supra, in the context of Section 205 of the said Act. There is, thus, no case of absence of power.

7. The aforesaid being the position, whether in a given case the power has been wrongfully exercised or rightly exercised will depend on the factual matrix of the case and it is not possible in a public interest litigation to lay down that such power should not be exercised.

8. We may, however, observe that the establishment of panchayat to support devolution of administration at the ground level would require the authorities to make the persons elected more aware of their duties and responsibilities and that is an endeavour which must continue.

9. We are, thus, not inclined to pass any directions in this petition. The petition is accordingly closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Principal Secretary

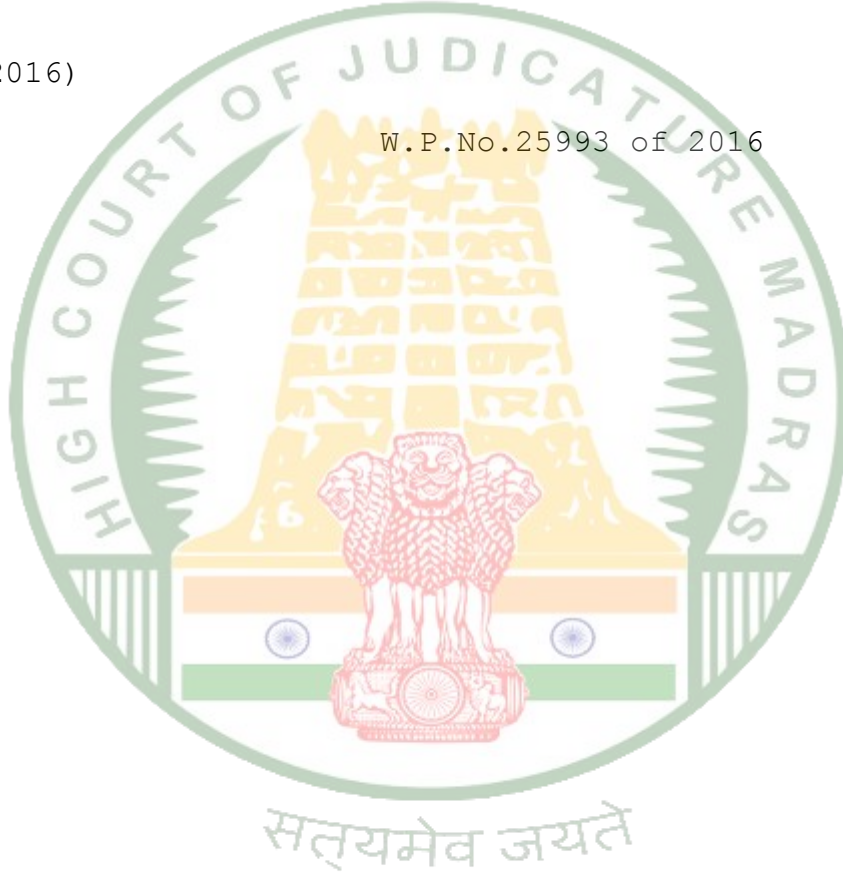
State of Tamil Nadu
Rural Development and
Panchayatraj Department
Fort St. George, Chennai - 9.

2. The Director of Rural Development
and Panchayatraj
Panagal Maaligai, Saidapet
Chennai - 15.

+1cc to Mr.P. Selvi , Advocate, S.R.No.72417
+1cc to the Government Pleader, S.R.No.72143

mg (CO)
md(16/12/2016)

W.P.No.25993 of 2016



WEB COPY