

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HON'BLE MR.JUSTICE B. PUGALENDHI

WP No.15343 of 2020

and

WMP.No.19190 of 2020

C. Tamizharasan

... Petitioner

Vs.

1. The District Collector,
(Inspector of Panchayats)
Salem District, Salem.

2. The Block Development Officer,
Ayothipattinam Panchayat Union,
Salem District.

3. K.Nagaraj,
President
Kootathupatti Village Panchayat,
(Ayothipattinam Panchayat Union)
Vazhapadi Taluk, Salem District.

4. S. Thamayanthi

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order vide Na.Ka.No.84/2020/A5, dated 14.10.2020 from the first respondent herein to quash the same and consequently permit him to sign in the cheques of the Kootathupatti Village Panchayat along with the third respondent herein in accordance with the Section 188(3) of the Tamil Nadu Panchayat Act, 1994.

For Petitioner : Mr.L.Gavaskar

For Respondents : Mr.M.Elumalai
Additional Govt.Pleader
for R1 & R2

ORDER

This writ petition is filed as against the order of the first respondent/ the District Collector, (Inspector of Panchayats), Salem District, Salem, taking away the cheque signing power of the petitioner and entrusting the same to another person by the impugned order dated 14.10.2020.

2. The petitioner is an elected member of Kootathupatti Village Panchayat of Vazhapadi Taluk, Salem District and he has been elected as the Vice President of the said Panchayat. As per the Section 188 (3) of the Tamil Nadu Panchayat Act, 1994, he is entitled to sign in the Panchayat cheques, along with the President of the Panchayat.

3. The petitioner received a communication dated 14.08.2020 from the second respondent requiring the petitioner and the President and Ward Members to appear for an enquiry on 18.08.2020 at 11:30 a.m. to enquire into the resolution passed by the Panchayat to assign the cheque signing power to the fourth respondent by cancelling the power already vested with the petitioner. The petitioner appeared before the second respondent for enquiry on 18.08.2020 and thereafter the impugned order came to be passed by the first respondent on 14.10.2020 conferring the cheque signing power to the fourth respondent.

4. Mr.L.Gavaskar, learned counsel for the petitioner relying on the judgment of this Court passed in W.P.No.36417 of 2007 in the case of M.Ganapathy Vs The District Collector cum Inspector of Panchayat, Dharmapuri District and others, submitted that the District Collector has to act on the recommendation of the Block Development Officer and he has to apply his mind independently to the facts of the case to arrive at an unconventional conclusion after providing an opportunity of hearing to the person likely to be affected. But the District Collector, who is the Inspector of Panchayat without providing an opportunity of hearing to the petitioner has passed the impugned order.

5. Mr.Elumalai, learned Additional Government Pleader would submit that though the petitioner was elected as a Ward Member of the said Panchayat, since he is residing outside the Kootathupatti Village Panchayat, he never appeared for the Panchayat meetings nor signed the cheques and therefore the Panchayat finds very difficult even to meet out the day today expenses. He further submitted that the staffs of the Panchayat were not paid salary for more than six months in view of this anomaly. To solve the issue, the Members of Koothathupatti Village Panchayat Council, Ayodiapattinam Panchayat Union, Salem District convened a meeting on 12.08.2020 and passed a resolution to change the cheque signing power of the petitioner to some other member. Based on the resolution, BDO issued notice to the petitioner and conducted an enquiry on 18.08.2020 and sent his report to the District Collector. Consequently, the District Collector passed the impugned order under Section 203 of the Panchayat Act on the Emergency Powers conferred with the Collector.

6. This Court paid its anxious consideration to the rival submissions made and also perused the materials produced before this Court.

7. The petitioner is an elected member of the Panchayat and has also been elected as the Vice President of the Panchayat. It appears that the petitioner has failed to attend the Panchayat meeting for some time and therefore, a resolution has been passed by the Panchayat to change the cheque signing power. Based on this resolution, the Block Development Officer has also conducted an enquiry and sent his report to the District Collector. Considering the necessity for the Panchayat that the salary to the staffs have not been paid more than six months, the District Collector has invoked his Emergency power under Section 203 of the Panchayat Act and passed the impugned order taking away the cheque signing power from the petitioner/Vice President of Koothathupatti Panchayat and conferred the same with the fourth respondent.

8. On a similar issue, this Court, in W.P.No.36417 of 2007 dated 12.06.2009 in M.Ganapathy Vs The District Collector cum Inspector of Panchayat, Dharmapuri District and others held as follows:

12. This Court in many of its decisions has settled the principle that before cancellation of power of the Vice President to sign the cheques as a joint signatory, the District Collector has to act on the recommendation of the Block Development Officer and he has to apply his mind independently to the facts of the case to arrive at an unconventional conclusion. In the case on hand, the District Collector, who is the Inspector of Panchayat has to come out with an independent conclusion as to whether the resolution was passed in accordance with law and he has to apply his mind to arrive at a reasonable conclusion after providing an opportunity of hearing to the petitioner. It is seen that the District Collector has not afforded an opportunity of hearing to the petitioner before approving the resolution recommended by the Panchayat. Therefore, there is violation of the principles of natural justice.

9. The case on hand is identical to the case cited supra. Therefore, in the light of the above decision this writ petition is allowed and the impugned order passed by the first respondent dated 14.10.2020 is set aside with a direction to the petitioner to attend the meetings in future, without fail. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

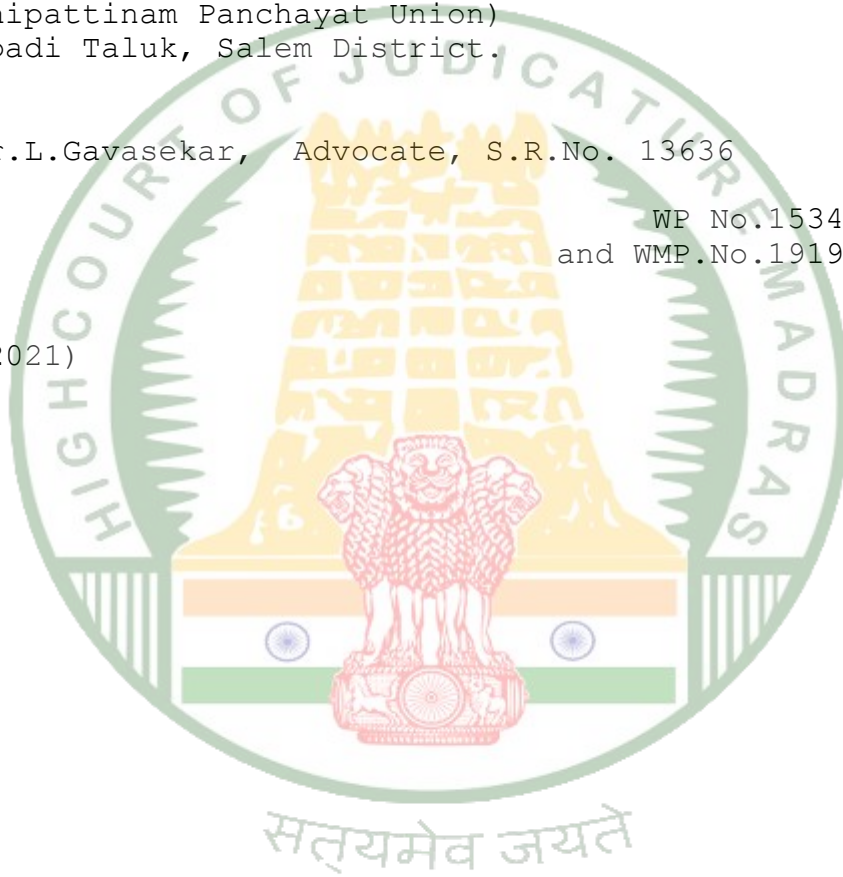
To

1. The District Collector,
(Inspector of Panchayats)
Salem District, Salem.
2. The Block Development Officer,
Ayothipattinam Panchayat Union,
Salem District.
3. The President
Kootathupatti Village Panchayat,
(Ayothipattinam Panchayat Union)
Vazhapadi Taluk, Salem District.

+1cc to Mr.L.Gavasekar, Advocate, S.R.No. 13636

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PL(CO)
GN(26/03/2021)



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