



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.12.2021

PRONOUNCED ON : 20 .12.2021

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD) Nos.15135 and 17537 of 2021

and

W.M.P. (MD) Nos.12059, 14374, 14375 and 14376 of 2021

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W.P. (MD) No.15135 of 2021:-

Pandiarajan

... Petitioner

vs.

1.The District Collector /
Inspector of Panchayat Union,
Sivagangai, Sivagangai District.

2.The Block Development Officer,
Sakottai Panchayat, Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings in Na.Ka.A1/558/2020, dated 17.08.2021 issued by the first respondent and quash the same as illegal.

W.P. (MD) No.17537 of 2021:-

Pandiarajan

... Petitioner

vs.

1.The District Collector /
Inspector of Panchayat Union,
Sivagangai, Sivagangai District.

2.The Block Development Officer,
Sakottai Panchayat, Sivagangai District.

3.The Executive Officer,
Sankarapuram Panchayat Union,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings of the third respondent signed on 09.09.2021, styled as "Monthly Meeting Notice" in respect of



Sankarapuram Panchayat, Sakottai Union, Sivagangai District and quash the same.

For Petitioner :Mr.V.R.Shanmuganathan (in both Cases)
For Respondents :Mr.Veerakathiravan
Additional Advocate General-III
assisted by Mr.S.Kameswaran
Government Advocate
(In both cases)

COMMON ORDER

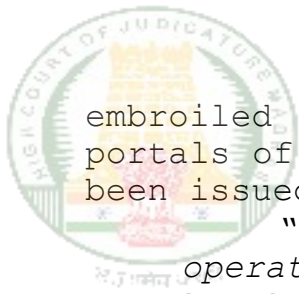
Both Writ Petitions have been filed by Mr.Pandiarajan. Owing to unexpected circumstances, he found himself thrust to the post of President, Sankarapuram Village Panchayat, Karaikudi in Sivagangai District.

2.W.P.(MD)No.15135 of 2021 had been filed in the nature of Certiorari seeking interference of the proceedings, dated 17.08.2021 of the first respondent/District Collector/Inspector of Panchayat, Sivagangai District, which relegated the petitioner, as the second authority to sign cheques for and on behalf of the Panchayat in view of his actual position as Vice President and had relegated the second respondent/Block Development Officer, Sakottai Panchayat Union, Sivagangai, to act as the first authority to sign the cheques.

3.This Writ Petition has been filed expressing grievance at the said proceedings, since till that time, the petitioner, though the Vice President, was acting as, in default President, owing to the fact that the contestants to the post of President were locked a legal battle pending before the Honourable Supreme Court and an interim direction had been given that neither of them should be permitted to function as President.

4.W.P.(MD)No.17537 of 2021 had been filed again in the nature of Certiorari seeking interference with a notice calling for monthly meeting by the second respondent/Block Development Officer, Sakottai. It had been filed questioning the authority of the second respondent/Block Development Officer, to act as Chairperson of the meeting, when the petitioner claimed that as in default President, he should have that privilege and also on the apprehension that during the meeting, a resolution adverse to the interest of the petitioner might be passed.

5.The entire case of the petitioner had arisen owing to the fact that the two contestants for the post of President of Sankarapuram Panchayat, Ms.Devi and Ms.Priyadharshini had questioned each others' right to be the President of the Panchayat and got



embroiled in judicial proceedings which finally, had reached the portals of the Honourable Supreme Court and an interim direction had been issued by the Honourable Supreme Court, as follows:

"Until further orders, there shall be a stay of operation of the impugned judgment(s) and order(s) passed by the High Court.

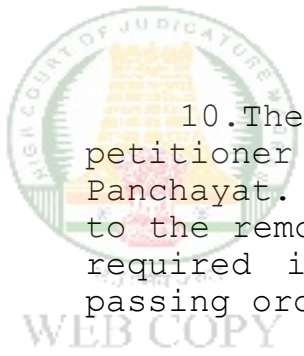
We also direct that the petitioner viz., A.Priyadharshini, shall not assume charge for the post of President of Sankarapuram Panchayat until further orders of this Court."

6.This created a vacuum and the petitioner, who was elected as Vice President by the Ward Members provided with an opportunity to act as the President of the Panchayat giving further opportunity to lay a prominent stake for the same. By proceedings dated 09.04.2020, the first respondent/District Collector/Inspector of Panchayat, realising that a President is required for the effective functioning of the Panchayat, permitted the petitioner to perform the functions of the President. This permission was granted by the first respondent invoking Section 203 of the Tamil Nadu Panchayats Act, 1994. The petitioner, however, also claims that under Section 47(1) of the same Act, whether, the first respondent had passed such order or not, as Vice President, he was entitled to perform the functions of the President, whenever the post of the President falls vacant.

7.At any rate, he commenced functioning the post of President. This effectively meant that in all cheques issued for and on behalf of the President, he was the first signatory and there was another second signatory, the Member from Ward No.6, Nallammal Selvarani. She was so permitted, by proceedings, dated 27.05.2020.

8.The impugned proceedings came to be passed on 17.08.2021 again by the first respondent/District Collector/Inspector of Panchayats, withdrawing that particular privilege granted to the petitioner and relegating the petitioner to his actual position, namely, Vice President and appointing the Block Development Officer of Sakottai Panchayat, as the first signatory to sign any cheque. Questioning that proceedings, W.P.(MD)No.15135 of 2021 had been filed by the petitioner.

9.Mr.VR.Shanmuganthan, learned Counsel for the petitioner questioned the legality of the impugned proceedings by stating that the petitioner was not heard prior to withdrawal of his privilege to act as President and that notice was also not issued. It was also pointed out that though in the proceedings, there is reference that complaints had been received from various persons, the copies of those complaints had not been put to the petitioner herein by the Collector, thereby violating the principles of natural justice.



10.The learned Counsel for the petitioner also pointed that the petitioner was incidentally also the Executive Authority of the Panchayat. He further pointed Section 206 of the Act, which related to the removal of Vice President and pointed out that the provisions required issuance of notice, examination of the explanation and passing orders on consideration of the same.

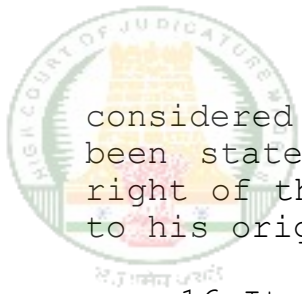
11.The learned Counsel for the petitioner placed specific reliance on Section 47 of the Act, which provided that the Vice President shall exercise the functions of the President, if the office of President is vacant. This, among these functions, would also include the right to convene the meetings of the Village Panchayat and also to execute and implement all schemes, programs or activities that may be entrusted to the President.

12.It was, therefore, the contention of the petitioner that not only had he been unreasonably removed from the privilege of being the first authority to sign the cheques, but also that the second respondent/Block Development Officer, had usurped the right to call for meetings, which is also a privilege attached to the post of President. This has led lead to the filing of W.P.(MD)No.17537 of 2021.

13.In the counter affidavit filed by the first respondent/District Collector/Inspector of Panchayat, it is contended that the petitioner had been co-opted as a President owing to a dispute between the two candidates, who contested the post of President and in order to avoid a vacuum, the petitioner, as the Vice President, was permitted to function as President. It was only a temporary arrangement. It was not an arrangement, which the petitioner can seek as a matter of right. It had also been contended that having been given such a privilege, it was only expected that the petitioner would bestow his attention towards the proper functioning of the Panchayat, but rather unfortunately, complaints have been received and this necessitated the first respondent to interfere with and withdraw such power and restore the petitioner back to his original post as Vice President.

14.It had further stated that if the petitioner had been selected as President and had been removed or his power had been divested, then opportunity must be given to him. But a permission granted had been withdrawn. Both grant of permission and withdrawal of permission were within the rights of the first respondent to ensure the smooth functioning of the Panchayat. The procedure was therefore justified by the first respondent.

15.In the counter affidavit filed by the second respondent/Block Development Officer, it had been contended that the petitioner was only holding the post of President temporarily and that since complaints had been received, the first respondent/District Collector/Inspector of Panchayat had taken a



considered decision to withdraw such privilege. It had therefore been stated that there was no withdrawal of any of the existing right of the said petitioner, but only restoring the petitioner back to his original position as Vice President.

16.It was also contended by the second respondent that as the authority who has the privilege to sign the cheques first, he has every authority to call for meeting. The meeting was only to discuss the affairs of the Panchayat and the petitioner cannot interfere with the same. He can always participate in the meeting and speak up for the benefit of the Panchayat.

17.Heard Mr.VR.Shanmuganathan, learned Counsel for the petitioner in both the Writ Petitions and Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.S.Kameswaran, learned Government Advocate for the respondents in both the Writ Petitions.

18.Mr.VR.Shanmuganathan, learned Counsel for the petitioner pointed out that the first respondent/District Collector/Village Panchayat keeping in mind the smooth functioning of the Panchayat had taken a conscious decision to nominate the petitioner as President of the Panchayat. The learned Counsel pointed out that under Section 47 of the Tamil Nadu Panchayat Act, 1994, in the absence of the President, the Vice President has a right to function as President. It was also contended by the learned Counsel that without any notice, such permission had been withdrawn by the first respondent and this act seriously violated the principles of natural justice. If the petitioner had been put on notice about the nature of the allegations, he could have very well answered the same.

19.The learned Counsel also placed reliance on Sections 83 and 84 of Tamil Nadu Panchayats Act and stated that the Executive Authority cannot be a President and under Section 84 of the Act, the functioning of the Executive Authority had been given and in this connection, the learned Counsel for the petitioner stated that the decision taken by the first respondent will necessarily have to be interfered with. It had also been contended that under Rule 3 of Tamil Nadu Panchayats Rule, 2000, meetings can be called only by the President and under Rule 6, the agenda can be determined only by the President.

20.It was further pointed out that under Rule 3 of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes), Rules, 1999, the Executive Authority shall determine the tax which each person having property is liable to pay. The learned Counsel, therefore, stated that the allegations of the first respondent cannot be held against the petitioner herein, since while functioning as President, he had every authority to assess and collect taxes for the properties.



21.The learned Counsel for the petitioner relied on a judgment of Honourable Supreme Court in the case of **Samuel vs Tukaram Laxman Sable and others**, reported in **1995 Supp (4) SCC 215**, and pointed out the following observation of the Honourable Supreme Court:

"8..... It is also admitted that as on today, no fresh or other proceedings have been initiated for removal/disqualification of the appellant for any alleged irregularities. In the circumstances, denying him the office of President would amount to punishing him for no fault of his. It cannot be that he is not guilty and yet he is removed from the offices held by him....."

22.The learned Counsel also relied on a judgment of this Court in the case of **S.Udayakumar vs The District Collector-cum-Inspector of Panchayats and others**, reported in **2009 (5) MLJ 537**, and pointed out the following observation:

"21. Section 203 of the Act empowers the Inspector to take immediate action, in case he was of the opinion that there was an emergent situation to 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. In such cases, the Inspector/Collector was entitled to pass appropriate orders for executing such work or doing such act and for payment of the amount for such works from the panchayat fund in priority to any other charges.

22. The power given to the Collector or Inspector was an emergency power to do certain acts in the interest of the panchayat. It was not an ordinary power to interfere in the affairs of the village panchayat. In case the village panchayat President or Executive Authority makes default in performing any of the duties imposed by or under the provisions of the Act, the Inspector was given powers under Section 204 of the Act to take appropriate action. The Collector or Inspector was not obliged to use the emergency powers as a routine measure....."

23.The learned Counsel relied on yet another judgment of this Court in the case of **Logeswari vs The District Collector, Tiruchirappalli and others**, reported in **2013 (2) CTC 846**, and pointed out that in that particular case, notice had not been issued. This Court had held as follows in paragraphs 17 and 22:

"17.The powers conferred upon the Collector under Section 203 is not intended to act as an authority to take Disciplinary proceedings against the President or Vice-President. The Government wanted the activities of the



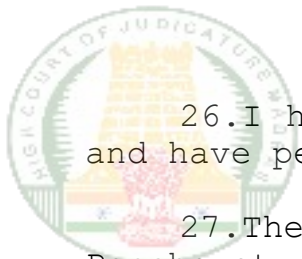
Panchayats to be taken up emergently, without obtaining formal orders from the Panchayat or Executive Authority. In case the Collector is of the view that the execution of a particular work is imminent or the doing of a particular thing is necessary for the safety of the public, it is open to him to take up such works without the association of the Panchayat or Executive Authority. A careful reading of Section 203, in the light of Section 86 of the Act, would make the position very clear that the power is intended to exercise only in emergency.

.....

22.The Inspector of Panchayats is given power under Section 205 of the Act to remove the President from office. Similar powers are given under Section 206 of the Act for the purpose of removal of Vice-President. Sub-Section (b) of Section 205(1) of the Act gives authority to the Inspector of Panchayats to take action against the President of Panchayat, in case it is made out that the President abused the power vested in him. In case it is made out that the President abused the cheque signing power, and misappropriated the public funds, the same can be a valid reason to initiate action for removal under Section 205 of the Act."

24.The learned Counsel thus contended that exercise of powers by the first respondent was an act of punishment and was not warranted and if it is to be termed as punishment, it cannot be imposed without putting the petitioner on notice. The learned Counsel, therefore, urged that both the impugned orders should be set aside and the Writ Petitions must be allowed.

25.Mr.Veerakathiravan, learned Additional Advocate General on the other hand pointed out that this case has to be differentiated from all the precedents cited by the learned Counsel for the petitioner, since the petitioner herein was permitted to act as President only pending resolution of the dispute before the Honourable Supreme Court and it was expected that the petitioner herein would discharge the duties of the President in accordance with the Rules. However, complains had come against the functioning of the petitioner herein, necessitating withdrawal of the power. The learned Additional Advocate General stated that notice was, therefore, not necessary, as the petitioner cannot claim any right to act as a President and therefore, in the interest of Panchayat, the emergency measures had been resorted to by the first respondent and therefore, the impugned proceedings had been passed. It was pointed out that the petitioner was only restored to his actual position, namely, Vice President and therefore, the learned Additional Advocate General justified the impugned proceedings.



26.I have given careful consideration to the arguments advanced and have perused the records available on record.

27.The petitioner cannot claim to be the President of the Panchayat. He did not contest in the election for the post of President. He contested only for the post of Ward Member. The Ward Members, who got elected, later selected him as Vice President. He cannot aspire to be the President. There had been an independent election for the post of President. But, owing to the disputes between the two rival candidates, there has been a small vacuum in the post of President.

28.There were two rival candidates for the post of President and there cannot be any scope for a third person to enter into and act as a President. The dispute between the two candidates, Ms.Devi and Ms.Priyadharshi, was pending before the Honourable Court and one of them alone, in accordance with the judgment of the Honourable Supreme Court, can be the President of the Panchayat. Nobody else can claim any lawful right.The initial act of the Collector appointing the petitioner as President itself is questionable, since the post of President was subjudice before the Honourable Supreme Court and viewed from any angle, the first respondent should have obtained permission from the Honourable Supreme Court before permitting the petitioner herein to act as President of the Panchayat.

29.Section 47 of the Tamil Nadu Panchayats Act, relied upon by the learned Counsel for the petitioner will have no application to the circumstances of this Act. Section 47(1) of the Act is as follows:

"47. (I) When the office of president is vacant, the vice-president shall exercise the functions of the president until a new president is declared elected and assumes office."

30.This provision comes into play, only when the office of the President is vacant. Here, it is not vacant. The dispute is live before the Honourable Supreme Court. At any point of time, the post will be filled. It is vacant only because it is under consideration of the Honourable Supreme Court and therefore, the petitioner has no right to claim the post of President.

31.Even a cursory reading of the above provision shows that a Vice President can exercise the functions of the President till a new President is declared and elected. This would obviously meant to cover a situation where the post of President had fallen vacant, owing to the fact that the elections were not held. When no elections had been held, then the Vice President can act as President. In the instance case, the elections for the post of President had been conducted. The petitioner did not contest in that election for the post of President.

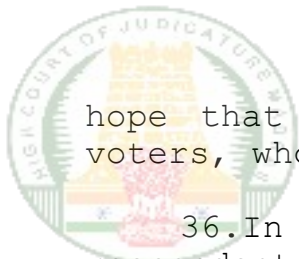


32.The result of the election depends upon the judgment of the Honourable Supreme Court. The first respondent/District Collector/Inspector of Panchayat, made a grave error while passing the proceedings on 09.04.2020 nominating the petitioner as President. He should have done so, only after obtaining permission from the Honourable Supreme Court. That very order, nominating the petitioner as President, itself is not lawful and non est in the eyes of law. Therefore, the petitioner cannot claim any right owing to the holding of a post to which he had no right to hold. The post of President will have to abide the judgment of Honourable Supreme Court. Till such time, as it was done in the impugned proceedings, the first respondent/District Collector/Inspector of Panchayats, should have appointed the second respondent/Block Development Officer or any other independent and responsible Official to act as the President. The first respondent should atleast have filed an application before the Honourable Supreme Court seeking permission and then appointing anybody as President till the judgment is declared by the Honourable Supreme.

33.When the right of the petitioner to function as the President itself is questionable, withdrawing the powers can never be assailed by him. The judgments quoted by the learned Counsel for the petitioner are distinguishable on facts with the present case. Here, once complaints had been received, then the first respondent/District Collector/Inspector of Panchayats had realised his error and with authority to revisit his earlier order had set the clock right and had divested the petitioner of all powers and restored the only powers which he can legitimately enjoy as Vice President. That alone has been done. I would therefore, not interfere with the impugned orders.

34.The first respondent/District Collector/Inspector of Panchayats had nominated the second respondent as the cheque signing authority alone. Therefore, that nomination is also lawful. As a responsible functionary, the second respondent has every right to call for meeting. During the meeting, if the Ward Members take a decision as to who is to preside over the meeting, then very certainly, the second respondent/Block Development Officer would abide by such resolution. Therefore, even W.P.(MD)No.17537 of 2021 is extremely premature. There must be periodical meetings of the Members of the Panchayat to take crucial decisions. The meetings may be called for only by the second respondent and thereafter, the members, who attend the meeting, can regulate the procedure in which the meeting is to be conducted.

35.W.P.(MD)No.17537 of 2021 has been filed even before the meeting could be convened and I would, therefore, dismiss the said Writ Petition and permit the second respondent to call for monthly meetings and give the liberty to the elected representatives/Ward Members to regulate the procedure for the meetings to be held. I



hope that they would do so keeping in mind the interest of the voters, who elected them as representatives.

36. In view of the above reasoning, the order of the first respondent withdrawing the powers of the petitioner herein and relegating him back to the position of Vice President and as the second authority to sign the cheques is upheld. I specifically hold that since complaints had been received, the correct step has been taken by the first respondent and in this regard, since the initial permission to the petitioner to act as President itself is unlawful, owing to the peculiar circumstances of the litigation now pending in the Honourable Supreme Court, the issue of notice not being served on the petitioner and explanation not being called from him cannot be agitated. I hold there has been no violation of the principles of natural justice and as a matter of fact, the said principles will not apply in the instant case, since the petitioner was holding a post, which he was not at all entitled to.

37. Section 47 of the Act does not come into play in the instant case. That provision would come into play only when elections had not been held for the post of President and the post had therefore fallen vacant or an elected President suffered from some inability and therefore the post had fallen vacant necessitating fresh elections. That is not the situation in the instant case.

38. The second respondent has every right to call for meetings and as observed, let the meetings proceed in accordance with the resolutions passed by the majority of the members who participate in the meetings. Therefore, W.P.(MD)No.15135 of 2021 is dismissed. W.P.(MD)No.17537 of 2021 is also dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar (CS)

cmr

To

1. The District Collector /
Inspector of Panchayat Union,
Sivagangai, Sivagangai District.

2. The Block Development Officer,
Sakottai Panchayat, Sivagangai District.



3.The Executive Officer,
Sankarapuram Panchayat Union,
Sivagangai District.

+2 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-39567[F] & SR-39562[F]
dated 20/12/2021)

+1 CC to M/s.SPL.GP (SR-39858[F] dated 21/12/2021)

W.P. (MD)Nos.15135 and 17537 of 2021
20.12.2021

MGJ(21.12.2021) 11P 7C