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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.3211 of 2022
and W.M.P.No.3353 of 2022

R.Vinodha

.. Petitioner

Vs.

1.The Inspector of Panchayat-cum-
District Collector
Dharmapuri District
Dharmapuri.

2.The Block Development Officer
(Village Panchayat)
Panchayat Union
Morappur, Dharmapuri District.

3.The Zonal Deputy Block Development Officer
Unit-III
Morappur Village Panchayat
Morappur Panchayat Union
Morappur, Dharmapuri District.

4.Umarani
Panchayat President
Morappur Panchayat
Morappur, Dharmapuri District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the order passed by the 1st respondent in Na.Ka.No.1856/2020/A1, dated 12.01.2022 and quash the same.

For Petitioner : Mr.S.Doraiswamy
For R1 to R3 : Mr.T.K.Saravanan
Government Advocate
For R4 : Mr.J.Bharathiraja



O R D E R

Writ Petition is filed for issuance of a Writ of Certiorari calling for the records relating to the order passed by the 1st respondent in Na.Ka.No.1856/2020/A1, dated 12.01.2022 and quash the same.

2. According to the petitioner, she is the Vice President of Morappur Panchayat, Dharmapuri District. She and other ward members gave a complaint against the 4th respondent that 4th respondent is acting arbitrarily without consulting the petitioner and other ward members. The 1st respondent on such complaint, withdrew the cheque signing power of 4th respondent. The 4th respondent filed Writ Petition No.16434 of 2021 challenging the order passed by the 1st respondent dated 16.04.2021. This Court by the order dated 08.10.2021 quashed the said order and directed the 1st respondent to ensure smooth functioning of Panchayat. On receipt of the said order, the 1st respondent called the petitioner to appear for enquiry on 24.12.2021 at 3.00 p.m. The said enquiry was postponed to 04.01.2022. On 04.01.2022, the petitioner appeared before the 1st respondent and explained that she is co-operating for smooth functioning of Panchayat and that only the 4th respondent and her husband are responsible for malfunctioning of the Panchayat. Both the petitioner and 4th respondent gave an undertaking to the 1st respondent for smooth functioning of the Panchayat. After enquiry, without issuing any notice and giving opportunity to the petitioner, the 1st respondent withdrew cheque signing power of petitioner and entrusted the cheque signing power to the respondents 3 and 4. Hence, the petitioner has come out with the present Writ Petition for the above stated relief.

3. The learned counsel appearing for the petitioner contended that impugned order passed by the 1st respondent is arbitrary, invalid and illegal as 1st respondent without giving any notice and opportunity to the petitioner to give her explanation, passed the impugned order. In support of his contentions, the learned counsel relied on the following judgments:

(i) Judgment dated 05.01.2011 made in W.A.(MD)No.579 of 2010 [C.Ashokkumar vs. The District Collector/Inspector of Panchayats and others];

"8. The idea behind the issuance of notice in any proceeding is to put on notice as to what are imputations against the person concerned. The first respondent, who is discharging a statutory power vested in him under Section 203 of the Act,



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is bound to act in a reasonable manner expected of from a statutory power, especially while dealing with a right of an elected representative of a local body. Issuing a notice need not be treated as a mere ritual or an empty formality. By the impugned order, the first respondent has taken away a statutory power conferred under Section 188(3) of the Act, which reads as follows:

"Subject to such general control as the village panchayat may exercise from time to time, all cheques for payment from Village Panchayat Fund shall 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 the President and another member authorised by the Village Panchayat at a meeting in this behalf."

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.. ..

11. We are satisfied that in the said notice dated 07.10.2009, no allegation is levelled against the appellant, and therefore, the consequential order passed by the first respondent dated 02.11.2009 cannot be sustained, as the said order is passed in violation of principles of natural justice."

(ii) 2005 (1) CTC 545 [Pugazhendran, President, Brammapuram Village Panchayat, Katpadi Panchayat Union, Katpadi Taluk, Vellore District vs B.G.Balu and others);

"16. In the present case, we are satisfied that there was violation of natural justice, since no notice was given by the Collector before passing order dated 07.11.2002. This averment has been specifically been made by the writ petitioner in paragraph-4 of his affidavit as well as in ground (d), but there is no specific denial of this allegation by the Collector in his counter affidavit. Hence this allegation must be deemed to be correct.

17. It is true that a G.O or Executive Order cannot violate a statutory provision. However, if the statute and the G.O can be read harmoniously then effort should be made by the Court to do so. Under G.O. Ms.No.92 dated 26.03.1997, in exceptional cases, where there is



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adversarial relationship between the President and the Vice President, the Panchayat, may, by a resolution, authorize any other member other than the Vice President (or President, as the case may be) to jointly operate the account along with the President (or Vice-President). However, prior approval of the Inspector of Panchayats (District Collector) has to be obtained for this."

4.Mr.T.K.Saravanan, the learned Government Advocate appearing for the respondents 1 to 3 and Mr.J.Bharathiraja, the learned counsel appearing for the 4th respondent separately filed counter affidavits and submitted that petitioner was not co-operating with 4th respondent and the Panchayat could not function effectively and smoothly. The petitioner is not co-operating in signing the cheque along with 4th respondent and therefore, activities of the Panchayat could not be carried on time. In view of the same, enquiry was conducted and after hearing the petitioner, the 1st respondent has passed the impugned order. The impugned order is valid and legal and prayed for dismissal of the Writ Petition. In support of his contentions, the learned Government Advocate appearing for the respondents 1 to 3 relied on paragraph 26 of the judgment reported in 2005 (1) CTC 545 [Pugazhendran, President, Brammapuram Village Panchayat, Katpadi Panchayat Union, Katpadi Taluk, Vellore District vs B.G.Balu and others] and the same reads as follows:

"26. In our opinion, if the Vice President (or President, as the case may be) by his conduct makes it impossible for the village panchayat to function (either by neglecting his duties or by causing regular obstruction in the administration or otherwise) he may be said to be 'absent'. Such interpretation of the word 'absence' in Section 188(3) would be taking a practical view otherwise the Vice President (or President, as the case may be) if he has adversarial relationship with the Vice President (or President as the case may be) can make it very difficult for the Village panchayat to function by his simple act of refusing to sign cheques. Funds are often required for various purposes and if the President or Vice President refuses to sign cheques for ulterior motives, as is the allegation in the counter affidavit in this case, the functioning of the village panchayat may become impossible. We are not expressing any opinion as to whether in this case, the Vice President has refused to sign for some



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ulterior motives, but we are certainly of the opinion that Section 188(3) of the Act, as well as G.O.Ms.No.92 dated 26.03.1997 can be read harmoniously in the manner mentioned above. We do not agree with the learned single Judge that if the Vice President (or President, as the case may be) refuses to sign it can never be a case of 'absence' within the meaning of the word in Section 188 (3) of the Act, and the only recourse which can be taken to is under Section 206. It may be noted that Section 206(2) of the Act states that before removing the Vice President the procedure mentioned in sub-sections (2) to (13) of Section 205 has to be complied with, and that procedure is a cumbersome, time consuming one. Surely for signing every cheque it would be impracticable to resort to that procedure. If the conclusion of the learned single Judge that for refusal to sign cheques action could be taken under Section 206(3) of the Act for removal of the Vice President (or President, as the case may be) the time bound programmes like Village Panchayat, ear-marked grant account like Sampoorana Grama Yojgas Yojana Scheme (Food for work), Village Panchayat Scheme Fund Account etc. will lapse if the funds are not utilized within the time stipulated, since the procedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome."

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent and perused the entire materials on record.

6.From the materials on record, it is seen that petitioner was elected as Vice President of Morappur Panchayat and as per the provisions of Panchayat Act, she is co-signatory along with 4th respondent in signing the cheque for the expenses and activities of the Panchayat. Originally, the cheque signing power of 4th respondent was withdrawn, Writ Petition No.16434 of 2021 filed by the 4th respondent was allowed and this Court directed the 1st respondent to ensure smooth functioning of Panchayat. According to the learned counsel appearing for the petitioner, without giving any notice and any reasons for withdrawing the cheque signing power of the petitioner and without giving any opportunity to her, her cheque signing power was withdrawn.



7.A similar issue came up for consideration before this Court in Writ Petition (MD) No.5547 of 2009. This Court following the judgment of Division Bench of this Court reported in 2005 (1) CTC 545 cited supra, allowed the Writ Petition and quashed the impugned order withdrawing cheque signing power on the ground that no notice was given to the Vice President and no opportunity of seeking explanation was given to the Vice President therein. It was held that before withdrawing cheque signing power, notice must be issued to the person setting out allegations made out and to give opportunity to submit his explanation. Only after considering the explanation, the authority can pass order as per the provisions of Panchayat Act. In the present case, the 1st respondent has not given any notice to the petitioner and no allegation against the petitioner was brought to her notice seeking her explanation. The impugned order has been passed in violation of provisions of Panchayat Act, which enables the 1st respondent to withdraw the cheque signing power of President or Vice President. The ratio in the judgment reported in 2005 (1) CTC 545 cited supra, is squarely applicable to the facts of the present case. For the above reasons, the impugned order of the 1st respondent is quashed. It is open to the 1st respondent to issue notice to the petitioner specifying the allegations against her, calling for her explanation and pass orders after considering the explanation given by the petitioner.

8.With the above observation, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector of Panchayat-cum-
District Collector
Dharmapuri District
Dharmapuri.



2.The Block Development Officer
(Village Panchayat)
Panchayat Union
Morappur, Dharmapuri District.

3.The Zonal Deputy Block Development Officer
Unit-III
Morappur Village Panchayat
Morappur Panchayat Union
Morappur, Dharmapuri District.

+lcc to Mr.J.Bharathiraja, Advocate SR.No.19283
+lcc to Mr.S.Doraisamy, Advocate SR.No.18534
+lcc to Special Government Pleader, SR.No.18778

W.P.No.3211 of 2022
and W.M.P.No.3353 of 2022

SKM(CO)
CB(31/03/2022)