

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15076 of 2022
and
W.M.P.No.14286 of 2022

S.Manivannan

... Petitioner

Vs

1. The Director,
Rural Development and Panchayat Raj,
Panagal Maligai, 4th & 5th Floor,
Abdul Razzak Street, Saidapet,
Chennai - 600 015.
2. The District Collector and the
Inspector of Panchayats,
Cuddalore District,
New Collectorate Building,
Manjakuppam, Cuddalore - 607 001.
3. The Project Director,
District Rural Development Agency,
Beach Road, Cuddalore.
4. The Assistant Director,
Rural Development and Panchayat Raj,
Cuddalore District, Cuddalore.
5. The Block Development Officer (V.P),
Kurinjipadi Panchayat Union,
Kurinjipadi.
6. S.Parimala

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to order passed by the second respondent through his proceedings vide Na.Ka.No.a2/0568/2021 dated 12.04.2022 and quash the same on the ground of it being arbitrary, irrational, illegal and against the principles of natural justice, consequently, direct the second respondent herein to permit the petitioner to sign the cheques along with

some other ward member of the Village Panchayat, Cuddalore District to enable to smooth functioning of the administration.

For Petitioner : Mr.S.A.Shanmugam

For Respondents:

For R1 to R4 : Mr.M.Shahjahan
Special Government Pleader

For R5 : Ms.R.L.Karthika
standing counsel

ORDER

Mr.M.Shahjahan, learned Special Government Pleader takes notice on behalf of the first to fourth respondents and Ms.R.L.Karthika, learned standing counsel takes notice on behalf of the fifth respondent.

2. The petitioner has challenged the impugned order dated 12.04.2022 passed by the second respondent whereby, the powers have been exercised under Section 203 of the Tamil Nadu Panchayats Act, 1994.

3. The specific case of the petitioner is that the sixth respondent is the Vice President of Puliur Panchayat, Cuddalore District. As a Vice President, she has not co-operated with the elected members of the Panchayat Board and therefore under these circumstances the sixth respondent refused to sign the cheque issued for payment of wages, expenses, electricity bills etc.

4. Under these circumstances, the petitioner sent a representation to the official respondents who have now decided to give powers to the fourth respondent The Assistant Director, Rural Development and Panchayat Raj and therefore they have taken away the powers vested with the Panchayat under Section 188(3) of the Tamil Nadu Panchayats Act, 1994.

5. The learned counsel for the petitioner has relied on the decision of this Court rendered in the case of The Panchayat President Vs The District Collector-cum-Inspector of Panchayat and others, in W.P(MD).No.4589 of 2015, dated 30.09.2015.

6. The operative portion of the aforesaid order which in turn follows the earlier order passed by this Court on 30.04.2009 in W.P(MD).Nos.1066 & 1067 of 2009 in the case of S.Udayakumar Vs The District Collector-cum-Inspector of

Panchayats and others, which reads as under:-

"15. Further, in S. Udayakumar vs. District Collector-cum-Inspector of Panchayats, Tuticorin district, Tuticorin (2009 (5) MLJ 537), the learned Single Judge of this Court has observed as under:-

"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. There was nothing mentioned in Section 203 of the Act which authorises the Collector to divest the President of his cheque signing powers during the pendency of a proceeding under Section 205 of the Act. The President would be divested of his powers only in the event of an order passed under Section 205(11) of the Act. Unless and until a notification was issued under Section 205(11) of the Act, the President has to be permitted to exercise his powers as a President of the panchayat. The charge against the petitioner was not something related to his failure to sign the cheque along with the Vice President. The charges were acts of misappropriation warranting action under Section 205 of the Act. By way of the impugned proceeding, the Collector, in exercise of the powers under Section 203 of the Act, has divested the petitioner of his power to sign the cheque along with the Vice President. Not even a notice was issued to the petitioner before issuing such proceedings. It was only as a consequential proceedings initiated under Section 205 of the Act, the Collector has issued the impugned proceedings divesting the petitioner of his power to sign the cheque. In any case, before divesting the petitioner of his power to sign the cheque, reasonable opportunity should have been given to him. It is not as if the moment action under Section 205 of the Act was taken against the President, he should be divested of the power to sign cheques. Section 203 of the Act is not intended for such purposes. It was only to tide over an emergency situation, power is given to the Collector

under Section 203 of the Act. The said power cannot be used in an ordinary situation. In any case there was a clear violation of principles of natural justice also, as the petitioner was not given notice before divesting him of the power to sign the cheques."

16. From the above decisions, it is clear that 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. There was nothing mentioned in Section 203 of the Act which authorises the Collector to divest the President of his cheque signing powers during the pendency of a proceeding under Section 205 of the Act. The President would be divested of his powers only in the event of an order passed under Section 205(11) of the Act. Unless and until a notification was issued under Section 205(11) of the Act, the President has to be permitted to exercise his powers as a President of the panchayat.

17. The Collectors are very often exercising this power to take away the cheque signing powers of the President and Vice President. 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 President and the Vice President are under the general control of the village panchayat. The statutory power given to the President of the Panchayat or Vice President cannot be taken away by the Inspector of Panchayat, by exercising the emergency powers. Since the cheque signing facility is given by the statute, there should be a specific power conferred upon the Inspector of Panchayats to take away such power. So long as there are no specific provisions to take away the cheque signing power of the President or Vice President, the Collector cannot invoke incidental or emergent powers to divest the elected representatives of their statutory right.

18. Apart from that, admittedly, in the case on hand, neither a notice nor an enquiry was conducted under Section 205 of the Act before the passing of the impugned order and in such circumstances, this

Court is of the view that the order passed by the first respondent is liable to be quashed and accordingly, it is quashed.

In view of the above, the writ petition is allowed. However, it is made clear that the respondents are at liberty to proceed against the petitioner in accordance with law, if the charges levelled against the petitioner are proved. No costs. Consequently, connected M.Ps. are closed."

7. Opposing the prayer, the learned Special Government Pleader for the first to fourth respondents would submit that the impugned order is well-reasoned and requires no interference. It is submitted that there is a deadlock in the management of the Panchayat inasmuch as, the petitioner and the sixth respondent are not co-operating and therefore the second respondent was constrained to give the powers to the fourth respondent to sign the cheque.

8. I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the first to fourth respondents and the learned standing counsel for the fifth respondent.

9. Section 188(3) of the Tamil Nadu Panchayats Act, 1994, reads as under:-

"188. Village Panchayat Fund-

(1)

(2)

(3) 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."

10. As per the aforesaid provision, the cheque is to be jointly signed by the President and Vice President and in absence of the President or Vice President, as the case may be, by the Vice President or the President and another member authorized by the Village Panchayat at a meeting in this behalf can sign.

11. If the case of the petitioner is that the sixth respondent is not co-operating and refusing to sign the cheque, it is for the petitioner to call for the meeting of the

Panchayat and pass a resolution and vest the powers with an alternate officer for signing the cheque. Section 203 of the Tamil Nadu Panchayats Act can be invoked only as an emergency power, where there is no way for dealing with deadlock in the management.

12. In my view, the powers can be exercised by the Panchayat collectively and thereby assigning the powers to the third person who is the Member of the Panchayat in terms of Section 188(3) of the Tamil Nadu Panchayat Act, 1994.

13. Considering the same, I am inclined to dispose of this writ petition by giving an opportunity to the petitioner, for holding a special meeting, to assign the powers for signing the cheque in place of Vice President with any other Officer.

14. This exercise may be carried out by the petitioner and shall be intimated to the official respondents if such powers are vested with any other officer or any other Member of the Panchayat, the impugned order dated 12.04.2022, shall stand automatically vacated.

15. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Rural Development and Panchayat Raj,
Panagal Maligai, 4th & 5th Floor,
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Chennai - 600 015.
2. The District Collector and the
Inspector of Panchayats,
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3. The Project Director,
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Rural Development and Panchayat Raj,
Cuddalore District, Cuddalore.
5. The Block Development Officer (V.P),
Kurinjipadi Panchayat Union,
Kurinjipadi.

+1cc to Mr.S.A.Shanmugam, Advocate, S.R.No.37817

+1cc to the Government Pleader, S.R.No.38254

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and
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GSM(CO)
UMA(15/07/2022)