



W.P. No. 25175 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 25175 of 2021

and

W.M.P. No. 26547 of 2021

S.Devasena

... Petitioner

-VS-

1. The State of Tamil Nadu,
rep. by Secretary to Government,
Rural Development and Local Administration Department,
Fort St.George,
Chennai - 9.
2. The Inspector of Panchayat/
The District Collector,
Cuddalore District,
Cuddalore.
3. The Additional Collector,
Cuddalore District,
District Rural Development Office,
Cuddalore - 1.
4. The Project Director,
Cuddalore.
5. The Assistant Director,
Rural Development and Land Administration,
Cuddalore District.
6. The Block Development Officer,
Cuddalore - 1.



W.P. No. 25175 of 2021

7. A.Tamilselvi
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Second Respondent relating to his order dated 12.11.2021 in Na. Ka. No. A2/0185/2020, quash the same and consequently direct the Second Respondent to remove the cheque signing authority from the Seventh Respondent and permit elected member S.Bagyam to counter sign cheques and PFMS forms along with the Petitioner in Sedappalayam Panchayat, Cuddalore District, as contemplated in Circular Na. Ka. A4/0418/2020 dated 07.05.2020 issued by the Sixth Respondent.

For Petitioner : Mrs. Hema Sampath, Senior Counsel
for Ms. R.Meenal

For Respondents : Mr. P. Balathandayutham,
Special Government Pleader
(for R1 to R5)

: Ms. Meera Arumugam (for R6)

: Mr. C.Prakasam (for R7)

ORDER

Heard Mrs. Hema Sampath, Learned Senior Counsel appearing for the Petitioner, Mr. P. Balathandayutham, Learned Special Government Pleader appearing for the First to Fifth Respondents, Ms. Meera Arumugam, Learned



W.P. No. 25175 of 2021

Counsel for the Sixth Respondent and Mr. C.Prakasam, Learned Counsel for the Seventh Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner and the Seventh Respondent have been elected as President and Vice-President respectively of Sedappalayam Panchayat and as per Section 188(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), they have to jointly sign all cheques of the funds of that Panchayat. According to the Petitioner, since the Seventh Respondent was not co-operating in signing the cheques and taking note of that situation, the said Village Panchayat had passed a resolution on 05.06.2020 authorizing one of its ward members, viz., S.Bagyam, to sign the cheques in the place of the Seventh Respondent. However, the Second Respondent by proceedings in Na. Ka. No. A2/0185/2020 dated 12.11.2021 passed an order stating that the Seventh Respondent has been advised to co-operate with the Petitioner in signing the cheques and no immediate action is required to act on the resolution to change the authority of signing the cheques from the Seventh Respondent to the said S.Bagyam. The said order is challenged by the Petitioner in this Writ Petition.



W.P. No. 25175 of 2021

3. It is brought to notice by Learned Special Government Pleader appearing for the First to Fifth Respondents that in furtherance to the interim orders passed by this Court from time to time, the Seventh Respondent has signed all the pending cheques till date. However, Learned Senior Counsel appearing for the Petitioner contends that the non-co-operative attitude exhibited by the Seventh Respondent has created administrative difficulties in the smooth functioning of the Village Panchayat including lapse of the period of validity of some cheques. In response, Learned Counsel for the Seventh Respondent explains that those disputed cheques had not been signed by the Seventh Respondent as there was no proper explanation from the Petitioner for issuing those cheques without verifying as to whether the works had been properly completed for which payment was sought to be made through those cheques and it is further stated that the Seventh Respondent is always willing to co-operate to sign the cheques, if they are prepared after proper verification of the actual work done by the concerned persons.

4. Before proceeding further, reference must be made to Section 188(3) of the Act, which reads as follows:-

“188. Village Panchayat Fund.....[3] Subject to such general control as the Village Panchayat may exercise from time to time,



W.P. No. 25175 of 2021

all cheques for payment from Village Panchayat Fund shall be signed jointly by the President and 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.”

It would be evident from the said legal provision that in the absence of the President or the Vice-President, one of the members of the ward, who has been authorised by the Village Panchayat, would be conferred with the power to sign the cheques. The Government of Tamil Nadu has also issued G.O. Ms. No. 92, Rural Development (C.III) Department dated 26.09.1997 in which it has been stated as follows:-

“All the accounts should be jointly operated by the President and the VicePresident. In exceptional cases, when there is adversarial relationship between the President and the Vice-President, the panchayat, may, by a resolution authorize any other member other than the Vice President to jointly operate the account along with the President. Provided that prior approval of the Inspector of Panchayats (District Collector) will be obtained for this.”

The Division Bench of this Court in ***Pugazhendran -vs- B.G.Balu*** [(2005) 1



W.P. No. 25175 of 2021

CTC 545] after referring to the relevant statutory provisions, has determined the

question as to where if the Vice-President (or President, as the case may be) has adversarial relationship with the President (or Vice President) of the Panchayat, and if for ulterior motive he refuses to sign the cheque, can this be treated as his 'absence'? In other words, whether the provision in G.O.Ms. No. 92 dated 26.3.1997, which states that in exceptional cases where there is 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), is inconsistent with Section 188(3) of the Act?

The Division Bench of this Court has held therein as follows:-

“25. In our opinion, we can give a wider meaning to the word ‘absence’ than mere ‘physical absence’. One word can have several meanings, just as several words can have one meaning (synonyms). It all depends on the context in which it has been used. For example, the word ‘desertion’ appearing in Section 13 of the Hindu Marriage Act implies not only factum of separation, but also “animus deserendi”, vide Lachman v. Meena, AIR 1964 SC 40. There can be constructive desertion. The husband and



W.P. No. 25175 of 2021

WEB COPY

wife may be living together under the same roof, but the husband may have legally deserted her (wife) by his conduct. Similarly the word 'absence' is a word of wide connotation, and is not necessarily limited to 'physical absence'. The indifferent or obstructionist attitude of a person or avoidance can, in our opinion, amount to absence in some situations.

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*



W.P. No. 25175 of 2021

WEB COPY

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 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



W.P. No. 25175 of 2021

WEB COPY

Act for removal of the Vice President (or President, as the case may be) the time bound programmes like Village Panchayat, earmarked grant account like Sampoorana Grama Yojana 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.

27. *We would however point out that before granting prior approval it would be the duty of the Inspector of Panchayats (District Collector) to give a hearing to the Vice-President or (President, as the case may be) (which need not be a personal hearing as already mentioned above), and apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice-President (or President, as the case may be) is refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of Panchayats, to decide this matter objectively and impartially without being influenced by any*



W.P. No. 25175 of 2021

WEB COPY

extraneous pressures or considerations. If the refusal to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspector should refuse approval, but if it is for extraneous considerations or is mala fide he should grant it.”

5. In view of the aforesaid legal position, which governs the controversy involved in this case, the Writ Petition is disposed on the following terms:-

- (i) if the Seventh Respondent does not intend to sign any cheque sent by the Petitioner, the reasons for the same shall be communicated in writing within a working day along with the copy to the Second Respondent;
- (ii) in the event that the Petitioner is of the view that the reasons stated by the Seventh Respondent for not signing the cheque is not acceptable, the matter shall be immediately brought to notice of the Second Respondent, who shall thereafter conduct an enquiry as to the correctness of the rival claims of the Petitioner and the Seventh Respondent;
- (iii) if the Second Respondent is satisfied that the objection of the Seventh Respondent is justified, no action would be required to be taken against her;



W.P. No. 25175 of 2021

(iv) in the event it is found that the contention of the Seventh Respondent is

untenable, necessary orders shall be passed empowering the authorized member of the Village Panchayat to sign that particular cheque in her place; and

(v) such course of action shall be followed in respect of each cheque that is not signed by the Seventh Respondent.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.11.2022

kv

Index: Yes/No

Note: Issue order copy by 04.01.2023.

To

1. The Secretary to Government,
The State of Tamil Nadu,
Rural Development and Local Administration Department,
Fort St.George,
Chennai - 9.
2. The Inspector of Panchayat/
The District Collector,
Cuddalore District,
Cuddalore.



W.P. No. 25175 of 2021

3. The Additional Collector,
Cuddalore District,
District Rural Development Office,
Cuddalore - 1.
4. The Project Director,
Cuddalore.
5. The Assistant Director,
Rural Development and Land Administration,
Cuddalore District.
6. The Block Development Officer,
Cuddalore - 1.



WEB COPY



W.P. No. 25175 of 2021

P.D. AUDIKESAVALU, J.

kv

W.P. No. 25175 of 2021

15.11.2022