



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.10295 of 2021

and

W.M.P. (MD) Nos.7979 and 17164 of 2021

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Sankiliammal

... Petitioner

vs.

1.The District Collector,
Office of the District Collector,
Theni District.

2.The Assistant Director (Panchayats),
Office of the Assistant Director,
Theni.

3.The Block Development Officer,
Kadamalaikundu Myladumparai Union Office,
Myladumparai,
Theni District.

4.Gowri

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders issued passed by the first respondent in his proceedings in Na.Ka.No.9865/2021/Q-2, dated 12.05.2021 and quash the same and consequently directing the respondents to permit the petitioner to continue to sign as a second signatory in the Kandamanoor Panchayat cheques along with the fourth respondent.

For Petitioner	:	Mr.C.Jeganathan
For R1 to R3	:	Mr.N.Satheeshkumar
		Additional Government Pleader
For R4	:	Mr.K.Appadurai

O R D E R

Heard Mr.C.Jeganathan, learned counsel for the petitioner, Mr.N.Satheeshkumar, learned Additional Government Pleader for the first to third respondents and Mr.K.Appadurai, learned counsel for the fourth respondent.

2.The writ petition has been filed in the nature of Writ of Certiorarified Mandamus, seeking interference with an order passed by the first respondent/District Collector, Theni District, dated 12.05.2021, by which order, the said first respondent had frustrated



the right of the petitioner to sign cheques, which right, the petitioner claims in view of the position which she holds as Vice President of Kandamanoor Village Panchayat in Andipatti Taluk at Theni District.

3.Mr.C.Jeganathan, learned counsel for the petitioner assailed the impugned order on the ground that notice had not been issued to the petitioner prior to such drastic step being taken by the first respondent/District Collector and in this connection, learned counsel placed strong reliance on a Division Bench Judgment of this Court reported in **(2005) 1 CTC 545: (2005) 1 Law Weekly 506 : (2005) 1 MLJ 549 [Pugazhendran Vs. B.G.Balu and Others]**. The learned Division Bench, in that particular case, which was headed by the then Hon'ble Chief Justice was concerned with withdrawal of cheque signing powers under Section 188(3) of the Tamil Nadu Panchayats Act, 1994 and had given a very categorical statement/observation that such withdrawal of powers, though within the powers of the District Collector should be resorted to only after following the principles of natural justice, which includes issuing notice and getting an explanation and coming to a subjective satisfaction on the issues raised. In that particular case, fault was found on the said order of the District Collector by stating that the District Collector had only followed the recommendation of the Block Development Officer and on examining the resolution passed by the Village Panchayat. But, there was no indication in the order that the District Collector had actually applied his mind with respect to necessity to withdraw the cheque signing power of the Vice President, in that particular case.

4.Specific reliance had been placed by the learned counsel for the petitioner on paragraphs 27, 28, 29, 30, 31, which are extracted below:-

"..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 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

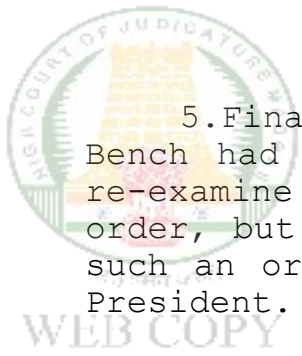


28. In view of the above discussions, we are of the opinion that G.O.Ms.No.92 dated 26.03.1997 is not violative of Section 188(3) of the Act and the two can be read harmoniously as stated above.

29. In the present case a perusal of the order of the District Collector, Vellore (Inspector of Panchayats, Vellore) dated 07.11.2002 cancelling the power of the Vice President to sign the panchayat's cheques as joint signatory, shows that the District Collector has merely acted on the recommendation of the Block Development Officer, Katpadi Panchayat Union, and he has not applied his mind independently to the facts of the case, and he has not come to any independent conclusion that the refusal to sign cheques by the Vice President was mala fide or for ulterior motives. The District Collector, Vellore without issuing notice to the petitioner appears to have mechanically accepted the report of the Block Development Officer, Katpadi Panchayat Union, which in our opinion was not proper.

30. In paragraph-4 of the petitioner's affidavit it has been specifically alleged that no notice was given by the District Collector before passing the impugned order, and this allegation has not been denied by the Collector in his counter affidavit. In our opinion, the District Collector's order dated 7.11.2002 has civil consequences, and hence it was incumbent on him to give a show cause notice to the petitioner before passing it, which was not done. Hence, in our opinion, there was violation of the principles of natural justice, and the impugned order becomes illegal.

31. The District Collector, Vellore should have given a show cause notice and an opportunity of hearing to the Vice President (which need not have been a personal hearing as already stated above), and after considering the explanation and other materials submitted by the Vice President, he should have applied his mind independently and in a fair and impartial manner, and should have recorded his own reasons in the order he passed. Since that does not appear to have been done in the order of the District Collector, Vellore dated 07.11.2002, in our opinion, the said order was rightly quashed. The matter is remanded to the District Collector, Vellore to pass a fresh order after giving an opportunity of hearing to the Vice President and President of the Panchayat, and others concerned, and after recording his reasons. This should be done very expeditiously by the District collector,

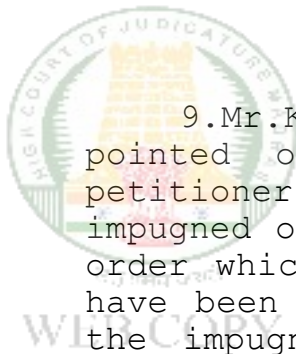


5.Finally, after giving the aforesaid findings, the Division Bench had also given necessary power to the District Collector to re-examine the entire issue. They had interfered with the impugned order, but had retained the power of the District Collector to pass such an order withdrawing the cheque signing authority to the Vice President.

6.The learned counsel for the petitioner, thereafter, pointed out that the petitioner herein as Vice President, had given a complaint against the fourth respondent, who was the President of the same Kandamanoor Village Panchayat and various allegations have been raised. It is claimed therefore, that the order had been passed out of *malafide* intentions, merely to wreck vengeance on the petitioner herein.

7.Quite apart from levelling allegations against the fourth respondent, the petitioner appears to have filed W.P.(MD)No.14946 of 2021 (Criminal), seeking investigation by a competent investigating agency with respect to the allegations which she had raised against the fourth respondent. The learned counsel stated that it was only under those circumstances, certain cheques that were presented for signature, were not signed by the petitioner herein, as the petitioner felt that signing of those cheques would be a serious encroachment to her principles. It was finally stated by the learned counsel that the petitioner is always ready and willing to sign the cheques and had also expressed such desire to sign the cheques, particularly, relating to the salary and other essential expenditures to be incurred on behalf of the Panchayat. Pointing out all the above factors, the learned counsel insisted that the impugned order should be interfered with, primarily on the ground of not following the procedure established by law.

8.Mr.N.Satheeshkumar, learned Additional Government Pleader, pointed out the counter affidavit filed by the first respondent, wherein, the circumstances leading to the passing of the impugned order were explained and the learned Additional Government Pleader pointed out that had been stated that during May 2021/the lock down period owing to Covid-19, emergent situation had arisen and the petitioner herein was called upon to sign certain cheques and in view of the fact that she did not oblige, the authority under Section 188(3) of the Tamil Nadu Village Panchayat Act, 1994 was invoked by the first respondent withdrawing the powers and assigning such power to another named official in the impugned order. It had also been stated that further, the Panchayat Members themselves have passed the resolution and had taken a decision to remove the cheque signing power from the petitioner herein. It was also stated that an enquiry had also been conducted and in view of the resolution of the majority members of the Village Panchayat, which resolution was also approved by the first respondent, after following due procedures, the impugned order had been passed.



9.Mr.K.Appadurai, learned counsel for the fourth respondent pointed out that there was no co-operation extended by the petitioner herein and the learned counsel also pointed out the impugned order, more particularly to the references in the impugned order which indicated that all the necessary materials and records have been perused by the first respondent prior to the passing of the impugned order. The learned counsel stated that necessary enquiry was conducted and only thereafter, the impugned order was passed.

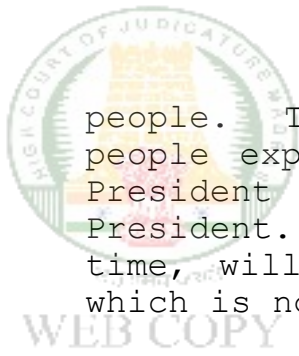
10.I have given my careful consideration to the arguments advanced and had perused the materials available on records.

11.Section 188 relates to Village Panchayat Funds. Naturally, while dealing with those funds, much care should be taken by the cheque signing authorities, namely, the President and the Vice President of the Village Panchayat. There is an obligation placed on them, that they would present themselves and pass certain expenditures to be incurred, particularly, in emergent situations. In May, 2021 as a fact, there was a pandemic wave across the country and also in Theni District and more particularly, in Kandamanoor Village Panchayat. The statement of the first respondent that in May, 2021, there was a necessity for emergent expenditures to be incurred owing to the pandemic Covid-19, cannot be overlooked by this Court or brushed under the carpet by this Court.

12.That situation, as a fact was a reality which every individual across the country faced. It was at that time, that the President and the Vice President should have arisen and should have acted together with due sense of responsibility thrust upon them. Among other responsibilities thrust on them was to act jointly for the welfare of the people. That was not an occasion to pick up issues with respect to each other. They may have differences. If they have differences, they cannot work as a team. Then they cannot resolve the requirements of the Panchayat and would be letting the general public to suffer owing to their differences.

13.The petitioner has a bundle of grievances against the fourth respondent. I have no comment to make on the same. The petitioner can proceed with in manner known to law to ensure that those grievances are addressed by the necessary authorities. The petitioner had also filed W.P.(MD)No.14946 of 2021 and the matter is pending before this Court. Naturally orders will be passed, at some point or the other. But the petitioner should realize that a larger duty and the first duty as an elected Vice President is towards the people and not towards anybody else.

14.During Covid-19, when sufferance was visible and evident across the State, anybody, who has, who was in authority should have buried their differences and acted in unison for the benefit of the



people. This is what was expected and this is what the electoral people expected, when they elect a particular person either as a President or the Ward Members joints together and elect a Vice President. Failure to discharge duty at that particular crucial time, will only invoke drastic orders being passed in the nature which is now impugned by the petitioner herein.

15.The claim of the petitioner is that notice was not given prior to withdrawal of the cheque signing power. But, it has to be examined whether such notice would have been a empty formality in the circumstances, which prevailed during the lock down of the second wave of Covid-19. At that particular time, it was a fact that the petitioner's signatures in the cheques were definitely required to be affixed. If the petitioner had not voluntarily come forward to affix the signatures then if the expenditures are immediate in nature, naturally, as Inspector of Panchayats, the first respondent/District Collector had to invoke the provisions under the Village Panchayat Act to ensure that the Panchayat makes necessary expenditures towards the needs of the people. The team will have to work with the leaders in unison. Even if the President/Vice President have personal grievances, official work should proceed and personal grievances should not be allowed to enter to encroach official duty and put a spoke on discharge of official duties.

16.Eventhough failure of issuing notice will be violative of the principles of natural justice, each case will have to be examined on the basis of the peculiar situation which prevailed at that particular point of time. Covid-19 was a situation, which was an emergency and Courts have to uphold a different set of procedures to be followed to handle such a situation. In May 2021, when as a matter of fact, there was a second lock down owing to Covid-19, it was expected that the petitioner would affix signatures for the necessary expenses which are meant for the welfare of the general public. The petitioner claims that the cheques which alone related to expenditures which were controversial in nature or to which contracts had been unilaterally awarded by the fourth respondent alone had been refused to be signed by the petitioner herein. That is an issue, which the petitioner can always agitate before the first respondent. But the petitioner should also realize that duty to the people is paramount and not to the post to which, she had been elected.

17.I would however give liberty to the first respondent to re-examine the entire issue, in view of the fact that the petitioner claims that she had not been put on notice. She may forward a representation to the first respondent. But till such time, let the named individual in the impugned order continue to be the second signing authority and let the first respondent conduct an independent examination of all the facts, which prevented the



petitioner from signing the cheques and pass necessary orders.

18.I am only giving a further opportunity to the petitioner herein to realize that she had been elected as a Vice President and that duty is thrust and placed on her by the people and she has to discharge that particular trust and there could not be any room to breach that particular trust. Therefore, the order impugned order is upheld.

19.A direction is however given to the first respondent, if at all the petitioner gives a further representation for reconsideration, to re-examine and revisit the impugned order. Till such an exercise is completed, let the impugned order continue. If on revisiting the order and on considering the representation of the petitioner herein, the first respondent is of the opinion that the impugned order can be withdrawn and the petitioner's right to sign the cheques can be again given back to the petitioner, the first respondent is at liberty to pass such an order. The petitioner is directed to give a fresh representation giving the reasons why the cheques signing withdrawing power, should be interfered with and revisited by the first respondent and such representation should be given, on or before **31.01.2022** and on receipt of such representation, the first respondent may conduct an enquiry in manner known to law and at any rate, pass necessary orders on or before **28.02.2022** and depending on that particular order, let the functioning of the Kandamur Village Panchayat be decided. Till the first respondent passes an order, the impugned order will stand and is not interfered with me.

20.Giving that particular liberty to the petitioner, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sjj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The District Collector,
Office of the District Collector,
Theni District.

2.The Assistant Director (Panchayats),
Office of the Assistant Director,
Theni.

3.The Block Development Officer,
Kadamalaikundu Myladumparai Union Office,
Myladumparai,
Theni District.

+1 CC to M/s.K.APPADURAI, Advocate (SR-103[F] dated 04/01/2022)

+1 CC to M/s.C.JEGANATHAN, Advocate (SR-242[F] dated 04/01/2022)

+1 CC to M/s.SPL.GP (SR-595[F] dated 06/01/2022)

W.P. (MD) No.10295 of 2021
04.01.2022

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