



W.A(MD)Nos.2246 and 2247 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)Nos.2246 and 2247 of 2021

and

C.M.P(MD) Nos.11205 and 11206 of 2021

Pandiarajan

... Appellant

(in both appeals)

-Vs-

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

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

... Respondents
(in both appeals)

COMMON PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, to set aside the order dated 20.12.2021 made in W.P(MD) Nos. 15135 and 17537 of 2021 on the file of this Court.

For Appellant : Mr.VR.Shanmuganathan



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For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by Mr.S.P.Maharajan
Special Government Pleader

(in both appeals)

COMMON JUDGMENT

(Judgment of the Court was made by **S.S.SUNDAR, J.**)

These writ appeals are directed against the order of the learned Single Judge dismissing the two writ petitions filed by the appellant in W.P(MD) Nos.15135 and 17537 of 2021 by a common order, dated 20.12.2021.

2.The brief facts which are necessary to the disposal of these writ appeals are as follows:-

(i) Pursuant to the announcement of general elections for all the village Panchayats in the State, elections were held on 29.12.2020. For the Sankarapuram Panchayat, which is situated in the outskirts of Karaikudi Town in Sivagangai District, the appellant contested in the election for the position of Ward Member. Though the election was also conducted to the post of President of Panchayat, it is admitted before



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this Court that two candidates were declared successful as elected and there was a confusion and the dispute is now pending before the Hon'ble Supreme Court. It is also admitted that in the writ petition filed by one of the presidential candidates by name, Mrs.A.Priyadharshini against the rival candidate Mrs.M.Devi in Special Leave Petition Nos. 3876-3877/2020, the Hon'ble Supreme Court has passed the following orders:-

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.

(ii) After the appellant assumed office as ward member, the elections for the post of Vice President was held on 04.03.2021. After getting 11 votes out of 15 votes, the appellant was elected as Vice President of the Panchayat. It is not in dispute that the appellant was



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discharging his duty as Vice President. By virtue of Section 47(1) of Tamil Nadu Panchayats Act, if the post of President is vacant, the Vice President has to exercise the functions of the President until the new president is declared elected and assumes office. Even if the President has been continuously absent from jurisdiction for more than 30 days or is incapacitated, the functions of the President shall devolve on the Vice President, as per Section 47(2) of Tamil Nadu Panchayats Act. In the said circumstances, the Inspector of Panchayat, namely the District Collector, Sivagangai, also passed an order on 09.04.2022, handing over the charge to the Writ petitioner/appellant to perform the functions of President. Though the order reads as if the District Collector has passed the order in exercise of the power under Section 203 of Tamil Nadu Panchayats Act, this Court is able to see that the order is only in recognition of the appellant's right to exercise the powers of President in terms of Sections 47 (1) or 47 (2) of Tamil Nadu Panchayats Act.

(iii) Later, the District Collector had passed an order dated 17.08.2021 cancelling the earlier order passed making the writ petitioner/appellant to perform the functions of the President and the consequential order appointing another ward member to perform the



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functions of Vice President. The Block Development Officer was directed to perform the functions of President. Thereafter, the Executive Officer of Sankarapuram Panchayat convened the meeting of Panchayat Council by notice dated 09.09.2021. Challenging the order of the District Collector dated 17.08.2021, the appellant filed the writ petition in W.P(MD) No.15135 of 2021 and questioning the monthly meeting notice dated 09.09.2021, the appellant filed another writ petition in WP(MD) No.17537 of 2021.

(iv) The main ground on which the appellant challenges the impugned order of District Collector and meeting notice was that the appellant is given the statutory power to perform the functions of President until new President is declared elected and assumes office by virtue of Section 47(1) of Tamil Nadu Panchayats Act and that the impugned order passed without issuing the show cause notice to the writ petitioner, is not only without jurisdiction, but also in violation of principles of natural justice. A detailed counter affidavit was filed by the second respondent, Block Development Officer, Sakkottai Panchayat, Sivagangai District and the District Collector, Sivagangai has filed an independent counter affidavit. The learned Single Judge dismissed both



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the writ petitions. Though a lengthy order was passed by the learned Single Judge, the crux of the order reveals that the learned Judge was of the firm view that Section 47(1) of Tamil Nadu Panchayats Act is not applicable to the case on hand, as the post of President is not vacant.

(v) The learned Single Judge expressed the view that the dispute between the rival claimants is pending before the Hon'ble Supreme Court and that the post will be filled as and when the Hon'ble Supreme Court passes the final order. It was presumed by the learned Single Judge that the appellant, as a vice President, has no right to claim the post of President. With regard to the question as to whether the order of the District Collector appointing the petitioner/appellant is valid, the learned Single Judge found that the District Collector ought not to have passed the order directing the vice President to assume the office of President, as the matter is pending before the Hon'ble Supreme Court. It is further held that the earlier order directing the Vice President to assume charge without obtaining permission from Hon'ble Supreme Court, is illegal. The learned Single Judge found that the situation in the present case would not warrant interference merely by citing Section 47 of Tamil Nadu Panchayats Act. Since the impugned notice in the other writ



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petition is only a consequential, both Writ Petitions were dismissed by the learned Single Judge. Aggrieved by the same, the above writ appeals are filed.

3.Mr.VR.Shamuganathan, learned counsel appearing for the appellant submitted that the view expressed by the learned Single Judge regarding the applicability of Section 47 of Tamil Nadu Panchayats Act is erroneous and the Vice President is entitled to exercise the functions of President until the new President is declared elected and assumes office as per Section 47(1) of Tamil Nadu Panchayats Act and that the District Collector has no power to interfere with the functions of Vice President without resorting to the proceedings for removal of Vice President. The learned Counsel then submitted that the impugned order passed by the District Collector is in violation of the principles of natural justice, as no notice was issued to the appellant. The learned counsel then pointed out that the proceedings initiated by the District Collector for removal of Vice President was also defeated by majority of the members and submitted that the impugned order citing some complaints against the petitioner/appellant by the members of council is illegal and arbitrary. The learned counsel further pointed out that the opinion of the District



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Collector while passing the impugned order is also erroneous in view of the admitted fact that by majority of members of council, the petitioner has proved that the allegations referred to by the District Collector in the order are baseless and not supported by any evidence.

4.However, Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents submitted that the order passed by the District Collector was not the one recognising the Vice President to perform the functions of President as contemplated Section 47 of Tamil Nadu Panchayats Act, but by invoking the powers of the District Collector under Section 203 of Tamil Nadu Panchayats Act, stating that the appellant was not performing the functions of President under Section 47(1) of the Tamil Nadu Panchayats Act, the learned Additional Advocate General submitted that the impugned order withdrawing the earlier order passed by the District Collector cannot be challenged.

5.This Court after hearing the submissions of the learned counsel on either side considered the relevant provisions of the Tamil Nadu Panchayats Act.



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6. Section 47 of Tamil Nadu Panchayats Act reads as follows:-

47. Devolution [...] of president's functions and filling up of vacancies in the office of president.

(1) 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.

(2) If the president has been continuously absent from jurisdiction for more than thirty days or is incapacitated, his functions during such absence or incapacity shall, except in such circumstances as may be prescribed, devolve on the vice president.

(3) When the office of president is vacant or the president has been continuously absent from jurisdiction for more than thirty days or is incapacitated and there is either a vacancy in the office of vice-president or the vice-president has been continuously absent from jurisdiction for more than thirty days or is incapacitated, the functions of the president shall devolve on a member of the village panchayat appointed by the Inspector in this behalf, and if no member of the village panchayat is available for such appointment, on such person as may be appointed by the Inspector in this behalf. The member of the village panchayat or the person so appointed (who shall be called as the temporary



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president) shall perform the functions of the president subject to such restrictions and conditions as may be prescribed, until a new president or vice-president is declared elected and assumes office, or either the president or the vice-president returns to jurisdiction or recovers from his incapacity, as the case may be.

(4) Any vacancy in the office of president shall be reported to the State Election Commissioner by such person and within such time as may be prescribed and the State Election Commissioner shall arrange for the election of the president.

(5) The president shall have power to control and revise the exercise or discharge of any functions devolving on the vice-president under sub-section (2).

7. Section 203 of the Tamil Nadu Panchayats Act is also relevant, which runs as follows:-

203. Subject to such control as may be prescribed, the Inspector or the Collector may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act which a panchayat or executive authority or commissioner or chief executive officer 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, and may direct that the expense of executing such work or doing such act shall be paid by the person having the custody of the Village Panchayat Fund or the Panchayat Union (General) Fund or the District Panchayat (General) Fund in priority to any other charges against such Fund except charges for the service of authorized loans.

8.The Word 'Vacancy' is not defined under the Act. In the absence of any definition restricting its meaning, even when the President is unable to act consequent to the orders of Court or by operation of law, it can be said that the post of President is vacant. Similarly, as per Section 47(1) of the Tamil Nadu Panchayats Act, when the post of Village Panchayat President is vacant by any circumstance, the Vice President has to exercise the functions of President until a new President is declared elected and assumes office. The word 'shall' conveys a clear meaning to confer the powers of President on the Vice President in the absence of President. Section 47 of Tamil Nadu Panchayats Act confers a right to the Vice President to perform the functions of President in the absence of President, without restrictions and no other option is available to the District Collector to circumvent the statutory provisions. When



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the power is given to the Inspector of Panchayat to appoint even a member of council in the absence of President and Vice President, this Court is unable to sustain the arguments of the learned Additional Advocate General that the District Collector permitted the Vice President to perform the functions of the President not by invoking Section 47 of Tamil Nadu Panchayats Act, but by exercising his power under Section 203 of Tamil Nadu Panchayats Act which deals with a different situation. Even assuming that a wrong provision is made by the District Collector while passing the order, this Court is unable to sustain the said argument having regard to the admitted facts.

9.From the reading of other provisions of the Panchayat Act, the District Collector can exercise the power to appoint any other member than Vice President only when the contingency specified in Sub Section 3 of Section 47 of the Tamil Nadu Panchayats Act arises. There is no other provision under the Tamil Nadu Panchayats Act to enable the District Collector to appoint any one when the post of President is vacant. The meaning of the word 'vacancy' has been considered by the Full Bench of this Court while dealing with the provisions of Madras Panchayat Act (Act 35 of 1958). Even under Section 34 of the Madras



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Panchayat Act, 1958 similar provision was there which is akin to Section 47 of Tamil Nadu Panchayats Act, 1994. As per Section 34 (i), (ii) and (iii) of 1958 Act, the Vice President shall exercise the functions of the President until a new President is declared elected and assumes office, when the office of President is vacant. It has been categorically held that the power of District Collector under Sub Section 3 of Section 34 of 1958 Act, (which is akin to Section 47 (3) of Tamil Nadu Panchayats Act 1994) is specific and the Inspector of Panchayat cannot appoint any one to perform the functions of President, when the Vice President is in office. The word 'vacancy' was also considered in few cases by this Court to cover the present situation.

10. Having regard to the discussions above, this Court is unable to sustain the order of the learned Single Judge in dismissing the writ petitions. Accordingly, the common order, dated 20.12.2021 passed in W.P(MD) Nos.15135 of 2021 and 17537 of 2021 is set aside and the Writ Appeals are allowed and the writ petitions stand ordered as prayed for. Since the learned Additional Advocate General referred to the allegations against the Vice President, it is open to the Inspector of Panchayat/District Collector, Sivagangai to proceed in accordance with



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law for any irregularities, which warrant appropriate action, in the manner as provided under the statute. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) & (S.S.Y., J.)

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Index : Yes / No

Internet : Yes / No

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