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Writ Petition No.10518 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/1/2023

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Writ Petition No.10518 of 2022

a n d

W.M.P.No.10206 of 2022

G. Indira

...

Petitioner

Vs

1. The Inspector of Panchayats/
District Collector
Thiruvannamalai District
Thiruvannamalai.

2. The Assistant Director of Panchayats
Cheyyar Sub-Division
Thiruvannamalai District.

3. The Block Development Officer
(Village Panchayats)
Chetpet
Thiruvannamalai District.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the order passed in Na.Ka.No.3045/2020/A4 dated 8/4/2022 on the file of the first respondent and quash the same.



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For Petitioner ... Mr.L.P.Shanmugasundaram

For respondents ... Mr.K.M.D.Muhilan
Additional Government Pleader

ORDER

This writ petition has been filed to quash the order passed in Na.Ka.No.3045/2020/A4 dated 8/4/2022 by the first respondent and quash the same.

2. Brief facts which are necessary for the disposal of this writ petition are as follows:-

The petitioner was the elected President of Karaipoondi Village Panchayat holding the post from 22/9/2014. The petitioner used to sign the cheques from 2/1/2020, the date on which he was elected as President. When the matter stood thus, first respondent has issued show cause notice, dated 15/3/2022 calling for explanation raising flimsy allegations that the petitioner has not properly issued notice to the members of the Panchayat regarding the agenda of each and every meeting and incurred certain expenses. The petitioner submitted his explanation on 22/3/2022, but



without properly considering the same, first respondent has issued the impugned order aggrieved by which the present writ petition is filed.

3. The first respondent/District Collector, Tiruvannamalai, has filed a counter, wherein it is stated that the Block Development Officer has sent a report to the first respondent, indicating that inspection revealed that the petitioner as President has indulged in malpractice and failed to discharge the legitimate duties of the Village Panchayat President and to abide by the Rules in the matter of incurring expenditure from Village Panchayat Fund and indulged in misappropriation of funds belonging to the Village Panchayat by having illegal contact with the subsisting contractors.

4. The crux of the allegation of the counter is to the effect that the petitioner has made payment of a sum of Rs.44,430/= to her son-in-law; a sum of Rs.14,790/- to an outsider and private Driver, named Velayudham under the head maintenance of Water supply and street lights, which are in violation of the procedure and that the payment should be made only to the respective institutions. Hence it is averred that the petitioner has shown interest in subsisting contract and acted in violation to Section 38 (3) of the Act.



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5. It is further averred that the petitioner was served with a copy of the Proceedings ROC.No.3045/2020/A4 dated 8/4/2022 by which the petitioner's cheque signing power was withdrawn and a copy of statutory notice in ROC.No.3045/2020/A4 dated 8/4/2022 through which action under Section 205 of Tamil Nadu Panchayats Act is initiated on 10/4/2022.

6. It is further stated in the counter affidavit that when proceeding is initiated as against the President of Village related to financial misdeeds, transferring the cheque signing power from the Village Panchayat to Block Development Officer is definitely a case of emergency falling within the provisions of Section 203 of the Act. If the Village Panchayat President is allowed to continue to sign the cheques, it would amount to endorsing the alleged irregularities committed by him. Hence, he opposed the writ petition.

7. Heard Mr.L.P.Shanmugasundaram, learned counsel for the petitioner and Mr.K.M.D.Muhilan, learned Additional Government Pleader for the respondents.



8. Learned counsel appearing for the petitioner submitted that the entire allegations in the show cause notice is baseless and there is no allegation as projected in the counter. The show cause notice dated 8/4/2022 does not indicate any financial misdeeds; rather it is only an allegation that no proper notice has been issued to the members of the Panchayat regarding the agenda of each and every meeting. Except that there is no allegation with regard to the alleged misappropriation. Therefore, it is his contention that signing of power vested under the statute as per Section 188 (3) of the Tamil Nadu Panchayats Act, 1994, on the President, cannot be taken off so lightly on such flimsy grounds. Hence, under the pretext of initiating the proceedings under Section 205 of the Tamil Nadu Panchayats Act, emergency clause cannot be invoked to snatch away the powers vested under the statute.

9. Countering the aforesaid submissions, learned Additional Government Pleader appearing for the respondents submitted that it is clearly established that the petitioner had failed to serve notice of meeting to the members and also incurred expenditure without following the procedures. It is further submitted that there were serious financial misdeeds, which were alleged and in that scenario, the 1st respondent had



thought it fit to take away the cheque signing powers by invoking the emergency provision, which cannot be said to be arbitrary or perverse.

10. He further submitted that the petitioner has a direct interest in the contracts awarded by the Panchayat which has been clearly spelt out in the counter. In such a view of the matter, cheque signing power of the petitioner was taken away, only for the purpose of preventing further loss to the Panchayat. In this regard, reliance was placed on the decision of the Division Bench of this Court in **2013 (2) CTC 846 LOGESWARI Vs. THE DISTRICT COLLECTOR, TIRUCHIRAPALLI AND OTHERS**, wherein the Division Bench has held that power of removal is well within the law and cannot be said to be illegal. Accordingly, he prayed for dismissal of the present petition.

11. I have perused the entire materials available on record.

12. It is not in dispute that the petitioner was elected as President and assumed charges as President of the Village Panchayat, on 2/1/2020. Show cause notice has been issued on 15/3/2022, calling upon the petitioner to give his explanations with regard to the allegation that the petitioner has not



issued proper notice to the members of the Panchayat regarding the agenda of each and every meeting and incurred certain expenses.

13. From a careful perusal of the aforesaid show cause notice, it is evident that what is alleged in the show cause notice is only the act of the petitioner in not making relevant entries with regard to the expenses incurred by the Panchayat. There is no allegation of any alleged misappropriation or any other grave allegation of the nexus of the petitioner with the contractor, as alleged in the counter. The issues, which have been spelt out in the show cause notice are trivial issues, which cannot be said to be as grave as misappropriation and that the issues, if at all are only procedural lapses.

14. Be that as it may. It is to be pointed out that the statutory power given to the President of the Panchayat cannot be taken away, by exercising the emergency powers more so when there is no allegation of such a nature warranting invocation of the emergency power. The President of the Panchayat is vested with the power of signing the cheque by the statute and such being the position, unless the 1st respondent is clothed with the power to take away the power conferred on the President of the Panchayat by a statute, the act of the 1st respondent could only be termed to be illegal. In



the absence of any allegation, which warrants the invocation of the emergency power by the 1st respondent to take away the cheque signing power of the President of the Panchayat, the act of the 1st respondent in invoking the incidental or emergency powers to divest the powers conferred on the elected representatives by the statute is nothing but an act of illegality perpetrated by the 1st respondent, which does not have the authority of law. In this regard, useful reference can be had to the decision of this Court in ***LOGESWARI Vs. THE DISTRICT COLLECTOR, TIRUCHIRAPALLI AND OTHERS (2013 (2) CTC -846)*** wherein the Division Bench, in paragraph 11, held as under :-

“Section 83 of the Act confers power on the Executive Authority of the Village Panchayat. Section 86 of the Act confers emergency powers on the Executive Authority and Commissioner to undertake urgent works. The said power is akin to that of Section 23 of the Act. Section 199 gives power to the Government to appoint such officers, as may be required, for the purpose of inspecting or superintending the operations of all or any of the Panchayat constituted under the Act. Section 200 provides for the powers of inspecting officers. Section



203 gives emergency powers to the Collector and Inspector. Section 205 empowers the Inspector of Panchayat to remove the President and Vice-President of the Panchayat. Section 214 gives power to the Government to dissolve a Village Panchayat, in case the Village Panchayat is incompetent to perform or persistently makes default in performing the duties imposed on it by law, or exceeds or abuses its powers.”

15. In the decision in ***PUGAZHENDRAN, PRESIDENT, BRAMMAPURAM VILLAGE PANCHAYAT, KATPADI PANCHAYAT UNION, KATPADI TALUK, VELLORE DISTRICT (2005 – 1 L.W. - 506)***, it has been held that before taking any action, grant of personal hearing is mandatory.

16. Admittedly, in this case, no personal hearing was granted to the petitioner. With regard to the decision relied on by the respondents in ***J.A.KARUNANIDHI Vs. THE COLLECTOR, TIRUVANNAMALAI DISTRICT, 2011 (5) MLJ – 766*** that the respondents clothed with power to initiate action with regard to financial misdeeds and could invoke the



emergency clause by taking away the cheque signing power of the President of the Panchayat. This Court has no quarrel with the above proposition of law. But as already pointed out, no financial misdeeds or misappropriation has been shown in the show cause notice, except for some averments in the counter and in such a backdrop, invoking the emergency provision to take away the cheque signing power provided by the statute cannot be permitted. On the facts and circumstances of the case, the invocation of the emergency power to take away the cheque signing power from the petitioner is wholly perverse and illegal and the order impugned herein cannot be allowed to survive.

17. In such a view of the matter, this Court is of the view that impugned orders taking away the cheque signing power of the writ petitioner is *per se* illegal and is liable to be set aside. Accordingly, the impugned order passed by the 1st respondent is set aside and the **writ petition is allowed**. However, the Collector is at liberty to proceed under Section 205 of the Act, on the basis of the available materials and take action as per law if materials are placed before the 1st respondent which relate to financial irregularities and misappropriation. In such a situation, it is open to the Collector to issue a fresh show cause notice before taking any



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action under Section 204 for taking away the cheque signing power of the petitioner, which is otherwise provided for under the statute.

No costs. Consequently, connected Miscellaneous Petition is closed.

25/1/2023

Index : Yes / No

Internet: Yes

Speaking/non speaking order

Neutral Citation: Yes/No

mvs.

To

1. The Secretary to the Municipal Administration and Water Supply
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The Commissioner
Sembakkam Municipality
Tambaram Taluk
Kancheepuram District
Chennai 600 073.



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N. SATHISH KUMAR, J

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