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W.P.No.12857 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.12857 of 2023
and W.M.P.No.12663 of 2023

Kamala Priya

... Petitioner

VS.

1.The District Collector cum Inspector of Panchayat,
Namakkal District,
Collectorate Office, Namakkal.

2.The Assistant Director,
Rural Development & Village Panchayats,
Namakkal District,
Collectorate Office, Namakkal.

3.Block Development Officer,
Erumapatti Village Panchayat,
Sendhamangalam Taluk,
Namakkal District.

4.Zonal Deputy Block Development Officer,
Erumapatti Village Panchayat,
Sendhamangalam Taluk,
Namakkal District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 1st



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Respondent Collector dated 30.11.2022 in Na.Ka.No.LA3/2342/2020 and to
QUASH the same.

For Petitioner : Ms.J.Amritha Sarayoo

For Respondents : Mr.P.Anandakumar
Government Advocate

ORDER

The writ petition is filed challenging the order passed by the 1st respondent divesting the petitioner, President of the Panchayat and the Vice President of their power to sign the cheque and authorising the 3rd and 4th respondents to sign the cheque in the place of petitioner and Vice President.

2. The learned counsel appearing for the petitioner by taking this Court to the order passed by the 1st respondent, submitted that even according to the 1st respondent, the allegations made against the petitioner needs to be enquired into. In such circumstances, the 1st respondent ought not to have issued the impugned order divesting the cheque signing power available to the petitioner. The learned counsel further submitted that the



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cheque signing power is a Statutory Power available to the petitioner and the same cannot be taken away by the 1st respondent by resorting to emergency power under Section 203 of the Tamil Nadu Panchayats Act, 1994. The learned counsel also relied on the judgment of this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli*** reported in **2013 (2) CTC 846** and also the order passed by this Court in ***G.Geetha vs. The District Collector*** in W.P.No.19841 of 2023 dated 01.08.2023.

3. The learned Government Advocate appearing for the respondents submits that the 1st respondent received various complaints against the petitioner/President and Vice President of the Panchayat. The 3rd respondent, who conducted an enquiry in this regard recommended to the 1st respondent to take action under Section 203 of the Tamil Nadu Panchayats Act, 1994 and therefore, the 1st respondent has passed the impugned order authorising the 3rd and 4th respondents to sign the cheque in the place of the petitioner and Vice President of the Panchayat. The learned Government Advocate also referred to the order passed by this Court in W.P.No.5851 of 2023 filed by the Vice President of the Panchayat challenging the very same impugned order wherein this Court by order



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dated 28.02.2023 set aside the impugned order as regards the Vice President of the Panchayat alone.

4. The learned counsel appearing for the petitioner in her reply submitted that the order referred to by the learned Government Advocate in W.P.No.5851 of 2023 was passed without ordering notice to the petitioner, who was arrayed as 5th respondent in that writ petition. Therefore, the same is not binding on her.

5. A reading of the impugned order passed by the 1st respondent would suggest that there were allegations and counter allegations against the President and Vice President of the Panchayat and 1st respondent is satisfied that the developmental activities of the Panchayat is affected due to non-cooperation among the Members of the Panchayat. In such circumstances, the 1st respondent ought to have invoked Section 204 (3) of the Tamil Nadu Panchayats Act, 1994 and authorised the President of the Panchayat to exercise the powers of the Panchayat for the time being pending any enquiry.



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6. Further, the cheque signing power available to the President and

Vice President of the Panchayat is a statutory power conferred on them under Section 188 (3) of the Tamil Nadu Panchayats Act, 1994. The power conferred by a statute can be taken away only as per the procedure contemplated under the statute. Section 188 (3) of the Tamil Nadu Panchayats Act, 1994, reads as follows:-

“188 (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.”

7. A reading of the above provision would make it clear that the cheques signing power of the President or the Vice President as the case may be, can be taken away only in their absence. Even in that case, a resolution shall be passed by the Village Panchayat authorising any other Member of the Panchayat to sign the cheques on behalf of the President or Vice President as the case may be. As per the instruction issued in



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G.O.Ms.No.92, Rural Development (C2) Department, dated 26.03.1997

such resolution can be introduced only with approval of the 1st respondent.

Even in such cases, the cheque signing power of the President cannot be taken away by the 1st respondent without following the natural justice principles by issuing notice to her and giving her an opportunity to explain her case.

8. There is no enabling provision in the Tamil Nadu Panchayats Act, 1994 empowering the 1st respondent to take away the cheques signing power of the President and Vice President and confer the same on the Block Development Officer.

9. In the absence of specific enabling provision, it is not open to the 1st respondent to resort to emergency power under Section 203 of the Tamil Nadu Panchayats Act, 1994 and take away the power available to the elected President and Vice President. The above said proposition was laid down by this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli*** reported in ***2013 (2) CTC 846***. The relevant observation of this Court reads as follows:-



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“21. 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.”

10. The ratio laid down in **Logeshwari** case cited supra was followed by this Court in **G.Geetha vs. The District Collector** in W.P.No.19841 of 2023 dated 01.08.2023.

11. In **N.Pachaiyammal vs. District Collector** reported in 2023 SCC



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Online Mad 5016 (W.P.No.20046 of 2023 dated 14.07.2023), while considering scope of Section 203 of the Tamil Nadu Panchayats Act, 1994, after referring to **Logeswari** case cited supra, this Court observed as follows:-

“9. A perusal of the above judgment would suggest that the power to sign the cheques has been conferred on the President and Vice President specifically under Section 188 of the Tamil Nadu Panchayats Act, 1994. Therefore, the cheques signing power is a Statutory Power available to the President and Vice President of Panchayat. There is no provision under the Tamil Nadu Panchayats Act, 1994, enabling the 1st respondent to withdraw the Statutory Power which is expressly conferred on the President of Panchayat.

10. The submission made by the learned Additional Government Pleader for the 5th respondent and learned Government Advocate for respondents 1 to 4 that the impugned order has been passed by the 1st respondent by exercising the power under Section 203 of Panchayat Act, cannot be accepted for the following reasons.

(a) Under Section 203 of Panchayat Act, the Inspector of



Panchayat is empowered to direct performance of any Act, which a Panchayat or Executive Authority or Commissioner or Secretary is empowered to do. None of the above authority are enjoying the cheques signing power.

b) Under Section 188 (3) of the Tamil Nadu Panchayats Act, 1994, the cheques signing power is jointly given to the President and Vice President. In other words, the cheques signing power is not exclusively given to the Executive Authority of the Panchayat namely the President.

c) Under Section 203 of the Tamil Nadu Panchayats Act, 1994, the Inspector of Panchayat is not entitled to direct performance of any Act which the President and Vice President is entitled to do jointly. Therefore, the 1st respondent is not entitled to withdraw the cheques signing power available to the President and Vice President by exercising power under Section 203 of the Act.

d) Further, withdrawal of the cheques signing power to the President and Vice President of the Panchayat would virtually cripple them from functioning as President or Vice President as the case may be. Such order would virtually amount to removal of the elected persons from their post.



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e) Under Section 205 of Panchayat Act, there is a specific provision with procedure for removal of President and Vice President. In such circumstances, the emergency power available to the Inspector of Panchayat under Section 203 of the Tamil Nadu Panchayats Act, 1994, cannot be resorted to by the 1st respondent for withdrawing the cheques signing power. This Court already has taken a similar view in the above mentioned case law and I agree with the view expressed in the case law cited above.”

12. Therefore, the above said case law is squarely applicable to the facts of the present case. Even in the impugned order, the 1st respondent on receiving report from the 3rd respondent regarding non-cooperation among the Members of the Panchayat resorted to emergency powers under Section 203 of the Tamil Nadu Panchayats Act, 1994 and passed the impugned order for withdrawing the cheque signing power of the President and Vice President of the Panchayat. Therefore, the impugned order is liable to be set aside.

13. Even otherwise, the 1st respondent by resorting to emergency power under Section 203 of the Tamil Nadu Panchayats Act, 1994, cannot



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withdraw cheque signing power available to President of Panchayat, which is statutory power. Section 203 of the Tamil Nadu Panchayats Act, 1994, reads as follows:-

“203. Emergency powers of Collector and Inspector.-

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 [Secretary] 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 authorised loans.”

14. A perusal of Section 203 of the Tamil Nadu Panchayats Act, 1994 would indicate by invoking emergency power, the Inspector of Panchayat



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can direct performance of any act which a Panchayat or Executive Authority or Commissioner or Secretary is empowered to do and direct the expenses of executing such work shall be paid by the person having custody of Village Panchayat fund. Under Section 203 of the Tamil Nadu Panchayats Act, 1994, Inspector cannot authorise another person, who is not having custody of funds to withdraw the same and pay. Under Section 188 (3) of the Tamil Nadu Panchayats Act, 1994, only President and Vice President are entitled to withdraw panchayat fund subject to overall control of Panchayat. Hence, custody of village panchayat fund deemed to be with President and Vice President subject to over all control of Panchayat. Hence, at the most Inspector can only direct President and Vice President to sign cheques jointly and pay for any of the above mentioned work directed to be performed by order of Inspector. He cannot authorise a third party, namely 3rd and 4th respondents herein to withdraw funds from panchayat fund in the absence of enabling provision. The impugned order is liable to be set aside on this ground also.

15. Accordingly, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous



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petition is closed.

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Index : Yes
Speaking order: Yes
Neutral Citation: Yes
dm

To

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Collectorate Office, Namakkal.
- 2.The Assistant Director,
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S.SOUNTHAR, J.

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