IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition No.17540 of 2023
WMP.Nos.16660, 16663, 16664 and 20930 of 2023

Mrs.Manjula

...Petitioner

Vs

1.The District Collector/Inspector of Panchayats,
Perambalur District.

2.The Block Development Officer,
(Village Panchayat),
Veppanthattai,
Perambalur District.

3.The President, Erayur Village Panchayat,
Veppanthattai, Perambalur District.

4.Ward Member, 2nd Ward, Erayur Village Panchayat,
Veppanthattai, Perambalur District
(R3, R4 cause title amended vide order dated 14.06.2023
made in W.P.No.17540 of 2023 by NAVJ)

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, praying to call of the records pertaining to the order dated 17.04.2023 in Se.Mu.No.580/2023/A3 passed by the 1st respondent, quash the same and direct the 1st respondent to reinstate the petitioner's cheque signing powers.

For Petitioner : Mr.M.Dinesh Hari Sudarsan

For Respondents : Mr.R.U.Dinesh Rajkumar
Additional Government Pleader for R1
Mr.B.Vijay
Additional Government Pleader
for R2 and R3

O R D E R

The writ petition has been filed by Vice President of Erayur Village Panchayat challenging the order passed by the 1st respondent withdrawing the cheque signing power of the petitioner and giving the said power to the 4th respondent.

2. According to the petitioner, she was elected as a Vice President of the Panchayat and she has been performing her duties in accordance with law. It is also stated that sometimes, the petitioner refused to sign the cheques as material documents demanded by the petitioner were not shown to her. It is also stated by the petitioner that due to certain health

issues and hospitalization, she could not attend the Panchayat Union meeting on 15.03.2023 and on that day, a resolution was passed withdrawing the cheque signing power of the petitioner. Based on the said resolution, the impugned order was passed by the 1st respondent on 17.04.2023.

3. Heard the arguments of Mr.M.Dinesh Hari Sudarsan, learned counsel appearing for the petitioner and Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents 2 and 3.

4. The learned counsel appearing for the petitioner mainly assailed the impugned order on the ground that the same was passed without giving an opportunity to the petitioner to put forth her case. The learned counsel for the petitioner further submitted that withdrawing the cheque signing power of the petitioner is an adverse order depriving the petitioner of a statutory power and therefore, before passing such an order, the 1st respondent, in due compliance of natural justice principles ought to have issued a notice calling for explanation.

5. Mr.B.Vijay, learned Additional Government Pleader appearing for the respondents 2 and 3 by taking this Court to Section 188 of Panchayat Act submitted that under Section 188 of Panchayat Act, the Village Panchayat is empowered to pass a resolution authorising any other member of the Panchayat to sign the cheques along with Vice President, in case of absence by Vice President. The said provision came for consideration before the Division Bench of this Court in ***Pugazhendran President vs. B.G.Balu*** reported in ***AIR 2005 Mad 370 : 2005 (1) CTC 545***, wherein, the Hon'ble Division Bench observed that continuous non-cooperation by either the President or Vice President and refusal to sign can be treated as his or her absence and in such cases, the Village Panchayat is entitled to pass a resolution authorising any other person to sign the cheque. The learned Additional Government Pleader further submitted that the notice was sent to the petitioner in the meeting convened on 15.03.2023, but she refused to receive the same and failed to attend the meeting. When the petitioner refused to receive the notice issued by the Panchayat, she cannot be heard to say that there was a violation of natural justice principle. In this regard, the learned Additional Government Pleader relied on the

Apex Court judgment in ***M/s.Dharampal Satyapal Ltd., vs Deputy Commissioner of Central Excise, Gauhati and others*** made in Civil Appeal Nos.4458 to 4459 of 2015.

6. The power to sign the cheque available to the President and Vice President of the Panchayat is a statutory power conferred by Section 188 of Panchayat Act. The relevant provisions reads as follows:

188. Village Panchayat Fund.- 1

[(1)] The receipts which shall be credited to the Village Panchayat Fund shall include-

2[(a) the house-tax and any other tax or any cess or fees levied under sections 171 and 172;]

3[(b) the profession tax levied by Village Panchayats under Chapter IX-A;]

(c) 4

5[(d) the proportionate share of the proceeds of the local cess, local cess surcharge, surcharge on the duty on transfers of property and entertainment tax received by the Village Panchayat under Sections 169 and 175-A;]

(e) 6

(f) the taxes and tolls levied in the village under Sections 117 and 118 of the Tamil Nadu Public Health Act, 1939 (Tamil Nadu Act VIII of 1939);

(g) fees levied in public markets classified as Village Panchayat markets after deducting the contributions, if any, paid by the Village Panchayat to the Panchayat Union Council on the scale fixed by the Government;

(h) the contribution paid to the Village Panchayat by Panchayat Union Councils in respect of markets classified as Panchayat Union markets;

(i) fees for the temporary occupation of village sites, roads and other similar public places or parts thereof in the Panchayat Village ;

(j) fees levied by the Village Panchayat in pursuance of any provisions of this Act or any rule or order made thereunder; Panchayat; Government; Panchayat;

(k) income from endowments and trusts under the management of the Village

(l) the net assessment on service inams which are resumed by the

(m) 7

(n) income derived from Panchayat Village fisheries;

(o) income derived from ferries under the management of the Village

(p) unclaimed deposits and other forfeitures;

(q) a sum equivalent to the seigniorage fees collected by the Government every year from persons permitted to quarry for road materials in the Panchayat Village:

(r) all income derived from porambokes the user of which is vested in the Village Panchayat;

(s) where the Panchayat Village is in a ryotwari tract, all income derived from trees standing on porambokes although the user of the porambokes is not vested in the Village Panchayat;

(t) income from leases of Government property obtained by the Village Panchayat;

(u) fines and penalties levied under this Act by the Village Panchayat or at the instance or on behalf of the Village Panchayat;

(v) all sums other than those enumerated above which arise out of, or are received in aid of or for expenditure on any institutions or services maintained or financed from the Village Panchayat fund or managed by the Village Panchayat;

8 [(w) such other moneys as may be specified by the Government.]

(2) Notwithstanding anything contained in sub-section (1), the Government may direct any Village Panchayat to constitute separate funds to which shall be credited such receipt as may be specified and such funds shall be applied and disposed of in such manner as may be prescribed.

(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 Section 188 (3) of Panchayat Act would suggest that subject to the general control of the village Panchayat,

President and Vice President are given power to sign the cheques for withdrawal of Panchayat funds. The above said provision would make it clear that in the absence of President or Vice President, as the case may be, the Village Panchayat may authorize any other member to sign the cheques in their place.

8. There may be a strained relationship between the President and Vice President and as a result of the same, one of them may refuse to sign the cheques deliberately. In order to meet such a situation, the Government of Tamil Nadu passed an order in G.O.Ms.No.92, dated 26.03.1997, wherein it is stipulated before passing a resolution, prior approval of the Inspector of Panchayat shall be obtained.

9. The provisions of Section 188(3) and the impact of the Government Order passed in G.O.Ms.No.92, came up for consideration before the Division Bench of this Court in ***in Pugazhendran President vs. B.G.Balu*** **reported in** ***AIR 2005 Mad 370 : 2005 (1) CTC 545,*** wherein the Hon'ble Division Bench came to the conclusion that in cases where the President or Vice President by their conduct makes it impossible for the

Village Panchayat to carry on its regular business either by neglecting their duties or by causing regular obstruction in the administration, it may be treated as their absence. The relevant observations of the Division Bench, in this regard is as follows:

> *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 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 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 Sampoorna Grama Yojgas 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 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.

10. A reading of above judgment would make it clear that consistent non-cooperation by President or Vice President of the Panchayat may be treated as absence within the meaning of Section 188 (3) of Panchayat Act. In such cases, it is open to the Village Panchayat to pass a resolution authorising another member to sign the cheque, on behalf of the person who neglected to perform their duties. However, the Hon'ble Division Bench categorically held that before passing resolution the

Inspector of Panchayat has to give prior approval only after issuing a notice to the affected party and giving him an opportunity to put forth his case.

11. The Inspector of Panchayat is entitled to give prior approval to Panchayat for passing resolution authorizing another member in the place of President or Vice President as the case may be, only in cases where he is satisfied that the President or Vice President by their negligence or non-cooperation made it impossible for the Village Panchayat to carry on regular business and hence it could be treated as absence.

12. Such opinion by the Inspector of Panchayat will cause serious Civil consequences. Therefore, before forming an opinion regarding absence of President or Vice President as the case may be, it is incumbent on the Inspector of Panchayat to issue show cause notice to the party concerned and to provide him an opportunity to put forth his case. In the case on hand, there is nothing available on record to suggest that prior approval of the Inspector of Panchayats/first respondent was obtained before passing a resolution authorizing the 4th respondent to sign the cheques in the place of the petitioner. Further, there is no material available

on record to suggest that at least before passing impugned order, the Inspector of Panchayat issued a notice to the petitioner and afforded him an opportunity to put forth the case.

13. Therefore, the impugned order is the one which was passed without following the directions issued by the Division Bench in paragraph No.27 of the above said judgment.

14. The learned Additional Government Pleader by relying on the judgment of the Apex Court in ***M/s.Dharampal Satyapal Ltd., vs Deputy Commissioner of Central Excise, Gauhati and others in Civil Appeal Nos.4458 and 4459 of 2015*** submitted that in view of the refusal of the petitioner to receive notice of meeting issued by Panchayat, she need not be issued with any show cause notice to put forth her case. The relevant observation of Apex Court, in the above judgment reads as follows:

> *Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the*

authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C Tobacco.

15. Under Section 188 of Panchayat Act the Panchayat is entitled to authorize any member to sign the cheques on behalf of the President or Vice President, as the case may be, only in cases, where they are absent. The Hon'ble Division Bench of this Court in ***M/s.Dharampal Satyapal Ltd., vs Deputy Commissioner of Central Excise, Gauhati and others,*** observed that continuous non-cooperation by them can be treated as absence. Therefore, before taking a decision about the non-cooperation by the petitioner and drawing a presumption of absence by default, she should have been issued with a show cause notice.

16. Because, such decisions will have serious Civil consequence. Hence, without affording an opportunity to the petitioner, it cannot be presumed that she was non-cooperative and therefore her absence can be presumed. Therefore, it is obligatory on the part of Inspector of

Panchayats to issue a notice to the affected party and after affording opportunity any decision on withdrawal of cheque signing power can be taken. If notice is issued to the petitioner to put forth her case, she will get an opportunity to show before the first respondent that there was no non-cooperation by her. This Court cannot enquire into the fact, whether there was a non-cooperation by the petitioner. Therefore, the impugned order passed by the first respondent without giving an opportunity to the petitioner, is a clear violation of natural justice principles and consequently liable to be set aside.

17. In view of the discussions made earlier, the impugned order is set aside as it was passed without giving any opportunity to the petitioner to put forth her case. The allowing of writ petition will not come in the way of either the first respondent or the concerned Panchayat from withdrawing the cheque signing power of the petitioner by following due process of law and natural justice principles.

18. With these observations, this writ petition is allowed. No

costs. Consequently, connected miscellaneous petitions are closed.

24.07.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No
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S.SOUNTHAR, J.

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