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W.P.No.20046 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.20046 of 2023

and

W.M.P.Nos.19394 and 19395 of 2023

N.Pachaiyammal

... Petitioner

VS.

1.The District Collector/Inspector of Panchayat
The District Collectorate Office,
Villupuram.

2.The Principal Secretary,
Department of Rural Development and Panchayats
Secretariat, Chennai – 600 009.

3.The Commissioner,
Department of Rural Development and Panchayats
Panagal Maligai, Saidapet,
Chennai – 600 015.

4.The Assistant Director (Panchayats)
District Collectorate Office,
Villupuram.

5.The Block Development Officer,
Olakkur Union,
Tindivanam Taluk,
Villupuram District.

... Respondents



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PRAYER: Writ Petition is filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of Impugned Order dated 17.05.2023 issued by the 1st respondent through his proceedings Na.Ka.No.AA3/271/2023 and quash the same as illegal, arbitrary and non-est in laws and further direct the 1st respondent to appoint the petitioner and any other member of Sethamangalam Panchayat Union to sign cheques and operate bank Panchayat accounts.

For Petitioner : Mr.G.Mohammed Aseef

For R1 to R4 : Mr.N.Naveenkumar
Government Advocate

For R5 : Mr.M.Rajendran
Additional Government Pleader

ORDER

The writ petition is filed by the President of Panchayat challenging the order passed by the 1st respondent withdrawing the cheques signing power available to the President and authorising the 5th respondent to exercise the said cheques signing power.



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2. Heard the arguments of Mr.G.Mohammed Aseef, learned counsel for the petitioner, Mr.N.Naveenkumar, learned Government Advocate for the respondents 1 to 4 and Mr.M.Rajendran, learned Additional Government Pleader for the 5th respondent.

3. The petitioner was elected as President of Sethamangalam Panchayat, Olakkur Taluk, Tindivanam District. It is stated by the petitioner that from the date of her appointment, the Vice President of the said Panchayat refused to cooperate with her. The petitioner made a representation to the respondents complaining about the non-cooperation by the Vice President. The Panchayat also passed a resolution on 02.12.2022 unanimously requesting the 1st respondent to appoint 3rd Ward Member as an authority to co-sign the cheque instead of Vice President. Though the resolution was passed by the Panchayat was sent to the 1st respondent, the 1st respondent has not taken any further action in pursuance of the same. In these circumstances, the petitioner made a representation dated 30.01.2023 to the 1st respondent requesting to take action against the Vice President. The petitioner also submitted a representation dated 14.03.2023 to the 2nd respondent for removal of the Vice President and the same has not been



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considered.

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4. Lateron, the 1st respondent by his proceedings dated 06.05.2023 appointed the 4th respondent herein as an authority to sign the cheques along with the President. In these circumstances, the impugned order has been passed by the 1st respondent dated 17.05.2023 appointing the 4th respondent as an authority to sign cheques by withdrawing the power available to the President.

5. The learned counsel for the petitioner submitted that under the Scheme of Tamil Nadu Panchayats Act, 1994, there is no power available to the 1st respondent to withdraw the cheques signing power of the President, which has been conferred on the President and Vice President under Section 188 of the Act. It is also submitted by the petitioner that in case of non-cooperation by the Vice President and others Members, under Section 204 of the Tamil Nadu Panchayats Act, 1994, the 1st respondent is empowered to authorise the President of the Panchayat to exercise the cheques signing power.



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6. It is also stated by the learned counsel for the petitioner that the impugned order has been passed without considering the representations submitted by the petitioner and hence, the same is violative of principles of natural justice.

7. Mr.M.Rajendran, learned Additional Government Pleader appearing for the 5th respondent submits that under Section 203 of the Tamil Nadu Panchayats Act, 1994, the 1st respondent has got emergency power and by invoking emergency power, the impugned order has been passed. The learned Government Advocate appearing for respondents 1 to 4 also tried to sustain the impugned order by relying on Section 203 of the Tamil Nadu Panchayat Act, 1994.

8. This Court had an occasion to consider the cheques signing power available to the President of Panchayat under Section 188 of the Tamil Nadu Panchayats Act, 1994 and the power available to the Inspector of Panchayat to withdraw the funds in ***Logeshwari vs. The District Collector, Tiruchirappalli*** reported in ***2013 (2) CTC 846***. The relevant observation of this Court in the above said judgment reads as follows:-



“20. The District Collector cannot act as an extra-constitutional authority over democratically elected President and Vice-President of the Panchayat. In case the elected President or Vice-President indulges in acts of misuse of authority and the cheque signing power should be taken away, it is for the legislature to incorporate appropriate provisions to confer such express powers of suspension on the District Collector.

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.

22. The Inspector of Panchayats is given power under



Section 205 of the Act to remove the President from office. Similar powers are given under Section 206 of the Act for the purpose of removal of Vice-President. Sub-Section (b) of Section 205(1) of the Act gives authority to the Inspector of Panchayats to take action against the President of Panchayat, in case it is made out that the President abused the power vested in him. In case it is made out that the President abused the cheque signing power, and misappropriated the public funds, the same can be a valid reason to initiate action for removal under Section 205 of the Act.

23. The President is an elected representative of the people of the village. The Constitution and the Panchayat Act wanted to give financial powers to the local body and it was only for the said purpose, the legislature has vested the Executive Authority on the Panchayat. The Legislature has given the cheque signing power to the President and Vice-President. The cheques have to 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 another member authorized by the Village Panchayat. Such a power cannot be taken away by the District Collector lightly by invoking the emergency powers.

The Legal Principles:

24. The importance of Panchayat Raj Institutions in the



light of Constitution (Seventy-third Amendment) Act, 1992 was indicated by the Supreme Court in Village Panchayat, Calangute v. The Addional Director of Panchayat, 2012 (3) MWN (Civil) 319 (SC) : 2012 (7) SCC 550. The Supreme Court observed:

"22. An analysis of Article 40 and Articles 243 to 243-O shows that the Framers of the Constitution had envisaged the Village Panchayat to be the foundation of the country's political democracy - a decentralised form of Government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment) Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayat Raj system evolved after Independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the people at the grass root through the institution of panchayats at different levels.

23. For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring



upon the panchayat the status of a Constitutional body. Parliament has ensured that the panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the panchayats have been empowered to formulate and implement their own programs of economic development and social justice in tune with their status as the third tier of the Government which is mandated to represent the interests of the people living within its jurisdiction. The system of panchayats envisaged in this part aims at establishing strong and accountable systems of governance that will in turn ensure more equitable distribution of resources in a manner beneficial to all."

Declaration of Law:

25. The law is, therefore, clear that the District Collector has no power under Section 203 of the Panchayat Act to take away the cheque signing power of the President and the Vice-President."

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



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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



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given to the Executive Authority of the Panchayat namely the President.

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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.

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.



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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.

11. A reading of the impugned order would suggest that a Show Cause Notice was given to the petitioner for her removal from the post of President and it appears she appeared before the 1st respondent. But however, it is mentioned that she failed to produce any documents.

12. Obviously, no Show Cause Notice has been issued to the petitioner calling for her explanation regarding the proposed action for withdrawal of cheques signing power. Therefore, without putting the writ petitioner on notice about the proposal of the 1st respondent to withdraw the cheques signing power, the impugned order has been passed based on the notice issued seeking her explanation for removal from the post of President.

13. In case of non-cooperation of the Vice President and other Members of the Village Panchayat, under Section 204 (3) of the Tamil Nadu Panchayats Act, 1994, the 1st respondent is empowered to authorise the



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President himself to withdraw the funds from the Village Panchayat Account.

14. In view of the discussions made above, the impugned order cannot be sustained and the same is liable to be quashed.

15. Accordingly, the writ petition is allowed by setting aside the order impugned in this writ petition. The 1st respondent is directed to issue a Show Cause Notice to the petitioner and Vice President of the Panchayat and conduct an enquiry with regard to allegations of non-cooperation made by the petitioner. Based on the findings on enquiry, it is open to the 1st respondent to proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

14.07.2023

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

dm

To

- 1.The District Collector/Inspector of Panchayat
The District Collectorate Office,
Villupuram.
- 2.The Principal Secretary,
Department of Rural Development and Panchayats
Secretariat, Chennai – 600 009.
- 3.The Commissioner,
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Panagal Maligai, Saidapet,
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