



W.P.No.21334 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.21334 of 2023
and W.M.P.No.20733 of 2023

M.Venda

...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 Panchayat Union,
Chetpet,
Thiruvannamalai District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire record relating to the order passed in Na.Ka.No.1454/2023/A3/Vu.E(Oo).Che.Ko dated 06.07.2023 on the file of the first respondent and quash the same.



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For Petitioner : Mr.L.P.Shanmugasundaram
For Respondents 1 & 2 : Mr.N.Naveen Kumar
Government Advocate
For Respondent 3 : Mr.R.P.Murugan Raja
Government Advocate

ORDER

The writ petition is filed challenging the order passed by the 1st respondent, withdrawing the cheque signing power of the petitioner, President of Kilpattu Village Panchayat, by invoking the provision under Section 203 of the Tamil Nadu Panchayat Act, 1994.

2.The petitioner is the President of Kilpattu Village Panchayat and she has been holding the post from 06.01.2020. The 1st respondent herein issued a Show Cause Notice on 05.05.2023, directing the petitioner to show cause why action shall not be taken against the petitioner under Sections 203 and 204 (1) (2) of the Tamil Nadu Panchayat Act, 1994. In the Show Cause Notice, the petitioner was directed to explain the circumstances under which the petitioner was arrested by Vigilance and Anti Corruption Wing. The petitioner was also



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directed to explain the alleged interference by the husband of the petitioner in the affairs of the Panchayat. The petitioner submitted an explanation on 08.06.2023, stating that the petitioner was arrested based on a false complaint and the matter is pending investigation. The petitioner's husband interference in the affairs of the Panchayat was also denied by the petitioner. Thereafter, the impugned order came to be passed withdrawing the cheque signing power available to the petitioner by invoking the emergency power under Section 203 of the Tamil Nadu Panchayat Act, 1994 .

3.The learned counsel for the petitioner assailed the impugned order mainly on the ground that the 1st respondent is not entitled to invoke Section 203 of the Tamil Nadu Panchayat Act, 1994 for withdrawing the cheque signing power available to the petitioner under Section 188(3) of the Tamil Nadu Panchayat Act, 1994. In this regard, the learned counsel for the petitioner relied on the following judgments.

“1)Logeshwari vs. The District Collector,

Tiruchirappalli reported in 2013 (2) CTC 846

2)R.Senthikumar vs. The District Collector, Sivagangai

District reported in 2015 (6) CTC 817



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3)N.Pachaiyammal vs. The District Collector,

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Villupuram in W.P.No.20046 of 2023 dated 14.07.2023.”

4.The learned Government Advocate appearing for the respondents submits that the petitioner was arrested by Vigilance and Anti Corruption Wing in the trap case. Consequently, she was arrested and remanded for sometime. In such circumstances, the 1st respondent is justified in invoking the emergency power under Section 203 of the Tamil Nadu Panchayat Act, 1994 withdrawing the cheque signing power available to the petitioner. The cheque signing power available to the President and the Vice President of the Panchayat is a statutory power available under Section 188(3) of the Tamil Nadu Panchayat Act, 1994, when the statute empowers a person to exercise the cheque signing power, the same can be withdrawn only as per the provisions of the statute.

5.Section 188(3) of the Tamil Nadu Panchayat Act, 1994 reads as follows;



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“(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”.

6.A perusal of the above provisions would suggest that the cheque signing power conferred on the President and the Vice President of the Panchayat, as the case may be can be withdrawn only in their absence, that too based on the resolution passed by the Panchayat. In the case on hand, the petitioner was arrested for sometime and thereafter released. It is not the case of the 1st respondent when the impugned order was passed the petitioner was in remand to infer the absence of the petitioner. Further as required by Section 188(3) of the Tamil Nadu Panchayat Act, 1994, no resolution has been passed by the Panchayat to withdraw the cheque signing power from the President and transfer the same to some other member of the Panchayat. In such circumstances, the conditions mentioned under Section 188(3) of the Tamil Nadu Panchayat Act, 1994 is not at all satisfied. The conditions mentioned in the Act for withdrawing the cheque signing power available to the President



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and the Vice President is not satisfied. It is not appropriate on the part of the 1st respondent to withdraw the statutory power by resorting to emergency power under Section 203 of the Tamil Nadu Panchayat Act, 1994. This position was very well settled by this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli***, cited supra wherein while considering the emergency power under Section 203 of the Tamil Nadu Panchayat Act, 1994 this Court observed as follows:

“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.



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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*



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indicated by the Supreme Court in Village Panchayat, Calangute v. The Additional 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



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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.

26. Therefore, I am of the view that the First Respondent was not justified in invoking the jurisdiction under Section 203 of the Act to divest the President of her cheque signing power."

7. The above said decision was followed by this Court in the case of ***R.Senthikumar vs. The District Collector, Sivagangai District*** reported in ***2015 (6) CTC 817***, wherein this Court observed as follows;



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“13. Here, the First Respondent has taken away the Cheque signing power from the Petitioner stating that he had acted against the interest of the Panchayat, that resulted in delay of many welfare projects. However, in the above said decision, this Court has categorically held that the District Collector, namely, the Inspector of Panchayats, has no power under Section 203 of the Panchayat Act to take away the Cheque signing power of the President and the Vice President.”

8. The Judgment referred in ***Logeshwari vs. The District Collector, Tiruchirappalli*** was followed by me in W.P.No.20046 of 2023, order dated 14.07.2023. Therefore, the impugned order passed by the 1st respondent by invoking the emergency power under Section 203 of the Tamil Nadu Panchayat Act, is liable to be set aside.

9. However, in view of the fact that the petitioner was arrested by Vigilance and Anti Corruption Wing in a trap case, if the 1st respondent decides to take action against petitioner in accordance with other enabling provisions under Tamil Nadu Panchayat Act, it is always open to the 1st respondent to proceed further and pass orders in accordance with law.



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10. With these observations, the writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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