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W.P.No.23097 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.23097 of 2023
and W.M.P.Nos.22646 & 25157 of 2023

Muthammal

...Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary
Rural Development & Panchayat Raj Department,
Fort St. George,
Chennai.
- 2.The District Collector,
Villupuram District Collectorate,
Villupuram.
- 3.Assistant Director of Panchayats,
Office of Assistant Director of Panchayats,
Villupuram District.
- 4.The Block Development Officer,
Olakkaur Panchayat Union Council,
Villupuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in Proceedings No.Na.Ka.No.A3/838/2023 dated 10.06.2023,



W.P.No.23097 of 2023

quash the same and consequently direct the 2nd Respondents and its agents neither to interfere any manner in the duties of a Vice-President nor restrain me from performing the same.

For Petitioner : Mr.C.Vigneshwaran
For Respondents 1 to 3 : Mrs.S.Anitha
Special Government Pleader
For Respondent 4 : M/s.C.Meera Arumugam
Additional Government Pleader

ORDER

The writ petition is filed by the Vice President of Village Panchayat challenging the order passed by the 2nd respondent withdrawing the cheque signing power of the petitioner and conferring the said power to Zonal Deputy Block Development Officer.

2.The learned counsel appearing for the petitioner submits that the impugned order has been passed by the 2nd respondent on the ground that the petitioner failed to cooperate with the President in running the administration of the affairs of the Panchayat. However, the petitioner has been cooperating with the President all along and the power to sign the cheque is the Statutory



W.P.No.23097 of 2023

Power available to the petitioner under Section 188(3) of the Tamil Nadu Panchayat Act, 1994 and the same cannot be taken away by the 2nd respondent in the absence of any enabling provision in the Panchayat Act.

3.The learned Special Government Pleader appearing for the respondents 1 to 3 and M/s.C.Meera Arumugam, learned Additional Government Pleader appearing for the 4th respondent submit that the impugned order has been passed as the petitioner failed to cooperate with the President of the Panchayat in running the affairs of the Panchayat. As the petitioner failed to sign the cheque to meet the essential expenses of the Panchayat, the 2nd respondent was constrained to invoke his emergency power under Section 203 of the Tamil Nadu Panchayat Act, 1994 and passed the impugned order.

4.The power to sign the cheque is the Statutory Power available to the President and Vice President of the Panchayat under Section 188(3) of the Tamil Nadu Panchayat Act, 1994. The said section reads as follows;

“(3) Subject to such general control as the Village Panchayat may exercise from time to time, all cheques for payment from



W.P.No.23097 of 2023

WEB COPY

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”.

5.A perusal of the above provision would suggest that the amount from the Village Panchayat fund can be withdrawn only jointly by the President and Vice President. In the absence of either President or Vice President, the Panchayat can pass a resolution empowering any one of its member to sign the cheque on behalf of the President or Vice President as the case may be. A perusal of impugned order would suggest that no such resolution has been passed in this case empowering any member of the Panchayat to exercise the cheque signing power on behalf of the Vice President. When statute prescribed a procedure for taking away the Statutory Power, the said procedure has to be followed. There is no provision in the Tamil Nadu Panchayat Act, 1994, enabling the 2nd respondent to take away the cheque signing power of the President or Vice President as the case may be without following the procedure contemplated under Section 188(3) of the Tamil Nadu Panchayat Act, 1994. Therefore, he is not entitled to invoke his emergency power and



W.P.No.23097 of 2023

pass the impugned order. The above said position is very well settled 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;

“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



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W.P.No.23097 of 2023

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 Additional Director of



W.P.No.23097 of 2023

Panchayat, 2012 (3) MWN (Civil) 319 (SC) : 2012 (7) SCC

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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



WEB COPY



W.P.No.23097 of 2023

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.

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."

6. The above said decision of this Court has been followed by me in ***N.Pachaiyammal vs. The District Collector, Villupuram*** in W.P.No.20046 of 2023 dated 14.07.2023 reported in 2023 (4) LW 264 .The above mentioned



W.P.No.23097 of 2023

decisions are squarely applicable to the facts of the present case. Therefore, the impugned order passed by the 2nd respondent by invoking emergency power is liable to be set aside.

7. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

14.09.2023
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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W.P.No.23097 of 2023

S.SOUNTHAR, J.
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To

- 1.The Secretary
Rural Development & Panchayat Raj Department,
Fort St. George,
Chennai.
- 2.The District Collector,
Villupuram District Collectorate,
Villupuram.
- 3.Assistant Director of Panchayats,
Office of Assistant Director of Panchayats,
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W.P No.23097 of 2023

14.09.2023