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W.P.No.24655 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.No.24655 of 2023

and

W.M.P.No.24097 of 2023

P.Kandasamy

....Petitioner

Vs.

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

2.The Block Development Officer,
Village Panchayat,
Namakkal Union,
Namakkal District.

3.The Zonal Deputy Block Development Officer,
Namakkal Union,
Namakkal District.

4.The Tahsildar,
Siluvampatti Village,
Namakkal District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 1st respondent through proceedings in



W.P.No.24655 of 2023

Na.Ka.No.UuNi3/8563/2022 dated 12.07.2023 and quash the same in so far as removing the petitioner's cheques and PFMS (Public Financial Management System) Forms signing powers as Vice President of the Siluvampatti Village Panchayat, Namakkal Panchayat Union, Namakkal District as illegal, arbitrary and non-est in the eyes of law and further direct the 1st respondent to appoint the Petitioner and any other member of Siluvampatti Village Panchayat to sign cheques and operate bank of Panchayat accounts.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.P.Anandha Kumar for R1 & R4
Government Advocate

: Mr.V.Prasanth Kiran for R2 & R3
Government Advocate

ORDER

The writ petition is filed challenging the order passed by the 1st respondent withdrawing the cheque signing power of the President and Vice President of Siluvampatti Village Panchayat, Namakkal Panchayat Union, Namakkal District.

2.The petitioner is the elected Vice President of the above said Panchayat. The President of the Panchayat appeared to have committed an act



W.P.No.24655 of 2023

of waste in respect of overhead water tank situated in the above said Panchayat by drilling holes. The petitioner and other persons submitted a representation to the 1st respondent about the illegal act committed by the President and requested him to take action in accordance with law. Since the representation of the petitioner has not been considered by the 1st respondent, he filed a writ petition in W.P.No.34798 of 2022, seeking direction to the 1st respondent to take action against the President of the Panchayat. The said writ petition was disposed of by recording the submission made by the learned Government Advocate that action had been already initiated against the President of the Panchayat by issuing show cause notice. Thereafter, the impugned order came to be passed by the 1st respondent withdrawing the cheque signing power of both the President of the Panchayat as well as the petitioner namely the Vice President. Aggrieved by the same, the petitioner is before this Court.

3.The learned counsel appearing for the petitioner submits that the cheque signing power available to the petitioner in his capacity as Vice President of the Panchayat is a statutory power conferred under Section 188(3) of the Tamil Nadu Panchayat Act, 1994 and the same cannot be taken away by the 1st respondent without any enabling provision. The learned counsel further



W.P.No.24655 of 2023

submits that in the impugned order nothing is stated against the petitioner and therefore, the order passed by the 1st respondent withdrawing the cheque signing power of the Vice President is without any basis. The learned Counsel further submits that before passing the impugned order, the 1st respondent failed to issue any notice to the petitioner calling for explanation.

4.Mr.P.Anandha Kumar, learned Government Advocate appearing for the respondents 1 & 4 submits that in spite of several letters, the 1st respondent has not come forward to file counter. It is seen from the records that the writ petition came up for hearing before this Court on 22.08.2023, on that day, Mr.P.Anantha Kumar, the learned Government Advocate took notice for the respondents 1 & 4 and Mr.V.Prasanth Kiran, the learned Government Advocate, took notice for respondents 2 and 3. At the request of learned Government Advocates, the matter was adjourned to 05.09.2023. Thereafter, the writ petition came up for hearing before this Court on 05.09.2023 and 20.09.2023, on both occasions at the request of the learned Government Advocate, the matter was adjourned to enable the respondents to file their counter. Till date, no counter has been filed by the respondents. Therefore, this Court proceeds to dispose of the writ petition based on the materials available



W.P.No.24655 of 2023

on record and submission of learned counsel appearing for both the sides.

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5. The learned Government Advocate appearing for respondent tried to support the impugned order by submitting that President of panchayat committed act of waste as mentioned in impugned order and hence 1st respondent is justified in passing impugned order by withdrawing cheque signing power.

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

“(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 above said provision would make it clear that the power to sign cheques is the statutory power available to the President and Vice President of the Panchayat. The same can be taken away only in the absence of



W.P.No.24655 of 2023

either President or Vice President that too based on the resolution passed by the Village Panchayat empowering any other member of the Panchayat to sign the cheques on behalf of the President or Vice President as the case may be. In the case on hand admittedly, as per the impugned order, no resolution has been passed by the Panchayat empowering any other member of the Panchayat to sign the cheques. Therefore, the essential condition for invoking power under Section 188(3) of the Tamil Nadu Panchayat Act, 1994 is not available, when Statute empowers the President or Vice President of the Panchayat to withdraw the amount from the Village Panchayat fund, by jointly signing cheques, the said statutory power cannot be taken away by the 1st respondent and in the absence of any enabling provisions. The said position has been authoritatively laid down by this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli*** reported in **2013 (2) CTC 84**. The relevant observation of this Court in this regard is 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-



W.P.No.24655 of 2023

WEB COPY

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



W.P.No.24655 of 2023

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



W.P.No.24655 of 2023

WEB COPY

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



W.P.No.24655 of 2023

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.”

8. The law laid down in the above said case 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**”. Further reading of impugned order would suggest that the cheque signing power of the President as well as the Vice President has been withdrawn and the same has been transferred to the Block Development Officer and the Deputy Block Development Officer mainly on the ground that the President of the Panchayat has committed an act of waste in respect of overhead water tank. There is no allegation against the Vice President, in such circumstances, absolutely nothing is mentioned in the impugned order about the necessity for transferring the statutory power of the Vice President to the Deputy Block Development Officer. Therefore, the impugned order is a non speaking one as far as the petitioner namely the Vice President of the Panchayat is concerned.



W.P.No.24655 of 2023

WEB COPY

9. In view of the discussions made earlier, this Court has no hesitation in interfering with the order passed by the 1st respondent in so far as the writ petition is concerned. Accordingly, the writ petition stands allowed by setting aside the order passed by the 1st respondent in so far as the writ petitioner is concerned. The 1st respondent is directed to restore the cheque and PFMS signing power immediately to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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W.P.No.24655 of 2023

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S.SOUNTHAR, J.
nti

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W.P No.24655 of 2023

27.09.2023