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W.P.No.24824 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P. No.24824 of 2023
and W.M.P.No.24224 of 2023

1. R.Sumathi
2. R.Barathiraja

...Petitioners

Vs.

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.Assistant Director,
Village Panchayat,
Kancheepuram District,
Kancheepuram.
- 3.The Block Development Officer,
Village Panchayat,
Kundrathur Panchayat Union,
Padapai, Kancheepuram.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent herein, vide., his proceedings in Na.Ka.No. 2504/2022/A6,



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dated 14.07.2023 to quash the same and direct the 1st respondent herein to conduct an enquiry by providing an opportunity of personal hearing to the petitioners.

For Petitioners : Mr.S.Sarath Kumar

For Respondents : Mr.N.Naveenkumar
Government Advocate

ORDER

The writ petition is filed by the President and Vice President of the Panchayat challenging the order passed by the 1st respondent withdrawing the cheque signing power available to the petitioners and transferring the same to the 3rd respondent and Zonal Deputy Block Development Officer.

2.It is the case of the petitioners that they are duly elected President and Vice President of Vaipoor Village, Kundrathur Union, Kancheepuram District and they have been performing their duties in accordance with law. The impugned order has been passed by the 1st respondent withdrawing the cheque signing power of the petitioners without any reason. Aggrieved by the same, the petitioners are before this Court.



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3.The learned counsel for the petitioners assailed the impugned order on the ground that the cheque signing power is the statutory power available to the petitioners under Section 188(3) of the Tamil Nadu Panchayat Act, 1994 and the same cannot be taken away by the 1st respondent in the absence of any enabling power. The learned counsel further submits that in the impugned order, the 1st respondent has not given any reason for withdrawing the statutory power available to the petitioners. Therefore, being a non speaking order, the same is liable to be set aside. In support of his contention, the learned counsel also relied on the judgment of this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli*** reported in **2013 (2) CTC 846** and ***N.Pachaiyammal vs. The District Collector, Villupuram*** in W.P.No.20046 of 2023 dated 14.07.2023 reported in **2023 4 LW 264**.

4.Mr.N.Naveenkumar, learned Government Advocate appearing for the respondents by taking this Court to the counter affidavit filed by the 1st respondent submits that there are various allegations against the petitioners regarding their style of functioning. Therefore, the proceedings have been initiated against the petitioners for their removal under Section 205 and 206 of



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the Tamil Nadu Panchayat Act, 1994. It is further submitted that the 1st respondent, who is a women President of the Panchayat allowed her relatives to interfere with the affairs of the Panchayat and the same is against the order passed by the Government in Na.Ka.No.43040/2020/Para. 1,3 dated 04.08.2021.

5.The cheque signing power available to the President and Vice President of the Panchayat is a statutory power under Section 188(3) of the Tamil Nadu Panchayat Act, 1994. The said provision 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”.

6.A reading of above said provision would make it clear that the statutory power available to the petitioners can be taken away only in their absence that too based on the resolution passed by the Panchayat empowering another member to sign the cheques. Therefore, there is no enabling provision



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in the Panchayat empowering the 1st respondent to withdraw the cheque signing power of the President and Vice President and confer the same to the 3rd respondent or other Sub-ordinate Officials. The said position has been laid down by this Court in ***Logeshwari vs. The District Collector, Tiruchirappalli reported in 2013 (2) CTC 84.*** 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



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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



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light of Constitution (Seventy-third Amendment) Act, 1992 was 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



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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.

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 of this Court has been followed by me in



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N.Pachaiyammal vs. The District Collector, Villupuram in W.P.No.20046 of

2023 dated 14.07.2023 reported in 2023 (4) LW 264 .Therefore, in the absence of any enabling provision empowering the 1st respondent to take away the cheque signing power of the petitioners, the 1st respondent is not justified in passing the impugned order by withdrawing the statutory power even assuming the 1st respondent is empowered to withdrawing the cheque signing power of the petitioners, the same cannot be done without any sufficient reasons. In the impugned order, the 1st respondent has not given any reason for withdrawing the cheque signing power available to the President and Vice President of the Panchayat. Though in the counter affidavit filed by the 1st respondent, he tried to support the impugned order by stating that based on various allegations made against the petitioners, proceedings had been initiated for petitioners' removal from the post of President and Vice President, the said allegations were not at all referred to in the impugned order .

8.It is not the case of the 1st respondent, as seen from the impugned order, if the petitioners are allowed to exercise their statutory power pending proceedings under Section 205 and 206 of the Tamil Nadu Panchayat Act, 1994, it would cause serious prejudice to the interest of panchayat. In these



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circumstances, being a non speaking order, the impugned order cannot be allowed to stand. Order impugned is liable to be set aside on that ground also.

9.It is made clear that allowing of this writ petition will not preclude the 1st respondent from proceedings further against the petitioners under Section 205 and 206 of the Tamil Nadu Panchayat Act, 1994.

10.In view of the discussions made earlier, the writ petition stands allowed by setting aside the impugned order. No cost. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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To

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S.SOUNTHAR, J.
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