



W.P. No. 26590 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 26590 of 2023

and

W.M.P. Nos. 26001 and 26002 of 2023

R.Akila

... Petitioner

-VS-

1. The District Collector and Inspector of Panchayats,
Collectorate,
Thiruvannamalai,
Thiruvannamalai District.
2. The Assistant Director (Panchayats),
Cheyyar Division,
Cheyyar, Thiruvannamalai District.
3. The Block Development Officer,
Vembakkam Union & Taluk,
Thiruvannamalai District.
4. The President,
Moranam Village Panchayat,
Vembakkam Taluk,
Thiruvannamalai District.
5. Thilaka,
The President,
Moranam Village Panchayat,
Vembakkam Taluk,
Thiruvannamalai District.



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6. A.Devaki,
The Member,
Ward No. 2, Moranam Village Panchayat,
Vembakkam Taluk,
Thiruvannamalai District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 16.08.2023 made in Na. Ka. No. 1686/2023/அ3/உஇ(உள) செ. கோ issued by the District Collector and Inspector of Panchayats, Thiruvannamalai District, the First Respondent herein and quash the same.

For Petitioner : Mr. A.V.Arun

For Respondents : Mr. S.Yashwanth,
Additional Government Pleader
(for R1 to R3)

Mr. K.H.Ravi Kumar (for R4 & R5)

No appearance (for R6)

O R D E R

Heard Mr. A.V.Arun, Learned Counsel for the Petitioner, Mr. S.Yashwanth, Learned Additional Government Pleader appearing for the First to Third Respondents and Mr. K.H.Ravi Kumar, Learned Counsel for the Fourth and Fifth Respondents and perused the materials placed on record, apart from the pleadings of the parties.



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2. The First Respondent and the Petitioner have been elected as President and Vice-President of Moranam Village Panchayat and as per Section 188(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), they are signatories to sign cheques of the funds in its bank account. According to the First Respondent, since the Petitioner was not co-operating in signing the cheques and taking note of that situation, the said Village Panchayat has passed on 21.07.2023 authorizing one of its Ward Members, viz., A.Devaki, who is the Sixth Respondent to sign the cheques in the place of the Petitioner. In that backdrop, the First Respondent by Proceedings in Na. Ka. No. 1686/2023/A3/Vu.E(Voo).Se.Ko dated 16.08.2023 has authorized the Sixth Respondent to sign the cheques of the funds in the bank account of the Panchayat in the place of the Petitioner, which is assailed in this Writ Petition.

3. It is brought to notice that in furtherance to the interim order dated 13.09.2023 passed by the Court, the First Respondent by Proceeding in Na. Ka. No. 1686/2023/A3/U.E(Oo), Se.Ko dated 10.10.2023 has restored the powers of the Sixth Respondent as the President of the Panchayat to sign the cheques on its behalf.



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4. It is the case of the Petitioner that before passing the impugned order, the Petitioner had expressed inability to sign the cheques as there was no proper explanation for issuing the same without verifying as to whether the works had been properly completed for which the payments was sought to be made through those cheques and it is further stated that the Petitioner is always willing to co-operate to sign the cheques if they are prepared after prior verification of the actual work done by the concerned.

5. At this juncture, reference must be made to Section 188(3) of the Act, which reads as follows:-

“188. Village Panchayat Fund.....[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 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.”

It would be evident from the said legal provision that in the absence of the President or the Vice-President, one of the members of the ward, who has been authorized by the Village Panchayat, would be conferred with the power to sign the cheques. The Government of Tamil Nadu has also issued G.O. Ms. No. 92,



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Rural Development (C.III) Department dated 26.09.1997 in which it has been stated as follows:-

“ All the accounts should be jointly operated by the President and the VicePresident. In exceptional cases, when there is adversarial relationship between the President and the Vice-President, the panchayat, may, by a resolution authorize any other member other than the Vice President to jointly operate the account along with the President. Provided that prior approval of the Inspector of Panchayats (District Collector) will be obtained for this.”

The Division Bench of this Court in ***Pugazhendran -vs- B.G.Balu*** [(2005) 1 CTC 545] after referring to the relevant statutory provisions, has determined the question as to where if the Vice-President (or President, as the case may be) has adversarial relationship with the President (or Vice President) of the Panchayat, and if for ulterior motive he refuses to sign the cheque, can this be treated as his ‘absence’? In other words, whether the provision in G.O.Ms. No. 92 dated 26.3.1997, which states that in exceptional cases where there is adversarial relationship between the President and the Vice-President, the panchayat, may, by a resolution authorize any other member other than the Vice president (or President, as the case may be) to jointly operate the account along with the



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President (or Vice-President), is inconsistent with Section 188(3) of the Act?

WEB C The Division Bench of this Court has held therein as follows:-

*“25. In our opinion, we can give a wider meaning to the word ‘absence’ than mere ‘physical absence’. One word can have several meanings, just as several words can have one meaning (synonyms). It all depends on the context in which it has been used. For example, the word ‘desertion’ appearing in Section 13 of the Hindu Marriage Act implies not only factum of separation, but also “animus deserendi”, vide **Lachman -vs- Meena** (AIR 1964 SC 40). There can be constructive desertion. The husband and wife may be living together under the same roof, but the husband may have legally deserted her (wife) by his conduct. Similarly the word ‘absence’ is a word of wide connotation, and is not necessarily limited to ‘physical absence’. The indifferent or obstructionist attitude of a person or avoidance can, in our opinion, amount to absence in some situations.*

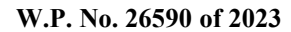
26. In our opinion, if the Vice-President (or President, as the case may be) by his conduct makes it impossible for the village panchayat to function (either by neglecting his duties or by



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causing regular obstruction in the administration or otherwise)

he may be said to be 'absent'. Such interpretation of the word 'absence' in Section 188(3) would be taking a practical view otherwise the Vice-President (or President, as the case may be) if he has adversarial relationship with the Vice-President (or President as the case may be) can make it very difficult for the Village panchayat to function by his simple act of refusing to sign cheques. Funds are often required for various purposes and if the President or Vice-President refuses to sign cheques for ulterior motives, as is the allegation in the counter affidavit in this case, the functioning of the village panchayat may become impossible. We are not expressing any opinion as to whether in this case, the Vice-President has refused to sign for some ulterior motives, but we are certainly of the opinion that Section 188(3) of the Act, as well as G.O. Ms. No. 92 dated 26.03.1997 can be read harmoniously in the manner mentioned above. We do not agree with the learned single Judge that if the Vice-President (or President, as the case may be) refuses to sign it can never be a case of 'absence' within the meaning of the word in Section 188(3) of the Act, and the only recourse which can be taken to is



27. We would however point out that before granting prior approval it would be the duty of the Inspector of Panchayats (District Collector) to give a hearing to the Vice-President or (President, as the case may be) (which need not be a personal



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hearing as already mentioned above), and apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice-President (or President, as the case may be) is refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of Panchayats, to decide this matter objectively and impartially without being influenced by any extraneous pressures or considerations. If the refusal to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspector should refuse approval, but if it is for extraneous considerations or is mala fide he should grant it.”

4. In view of the aforesaid legal position, which governs the controversy involved in this case, the following order is passed:-

- (i) if the Petitioner does not intend to sign any cheque sent to her, reasons for the same shall be communicated in writing within a working day along with a copy to the First Respondent;
- (ii) in the event that the Fifth Respondent is of the view that the reasons stated by the Petitioner for not signing the cheque is not acceptable, the matter shall be immediately brought to notice of the First Respondent,



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who shall thereafter conduct an enquiry as to the correctness of the rival claims of the Petitioner and the Fifth Respondent;

- (iii) if the First Respondent is satisfied that the objection of the Petitioner is justified, no action would be required to be taken against her;
- (iv) in the event, it is found that the contention of the Petitioner is untenable, necessary orders shall be passed empowering the authorized member of the Village Panchayat to sign that particular cheque in that place; and
- (v) such course of action shall be followed in respect of each cheque that is not signed by the Petitioner.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 08.01.2024.



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To

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Thiruvannamalai,
Thiruvannamalai District.
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P.D. AUDIKESAVALU, J.

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