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W.P. No. 28502 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

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

W.P. No. 28502 of 2023

and

W.M.P. Nos. 28052 and 28053 of 2023

N.Pachaiyammal

... Petitioner

-VS-

1. The Principal Secretary
Department of Rural Development and Panchayats
Secretariat, Chennai – 600 009.
2. The Commissioner
Department of Rural Development and Panchayats
Panagal Maligai, Saidapet
Chennai – 600 015.
3. The District Collector /Inspector of Panchayat
District Collectorate Office
Villupuram.
4. The Assistant Director (Panchayats)
District Collectorate Office
Villupuram.
5. The Block Development Officer
Olakkur Union
Tindivanam Taluk
Villupuram District.
6. N.Thulasingam

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, to call for the records of impugned order dated 31.08.2023 issued by the Third Respondent through his proceedings in Na.Ka.No.A3/271/2023 and quash the same as illegal, arbitrary and non-est in laws and further direct the Third Respondent to appoint Petitioner as a sole authority to sign cheques and operate bank panchayat accounts.

For Petitioner : Mr. G.Mohammed Aseef

For Respondents : Mr. Veda Bagath Singh, SGP (RR1 to 4)
Ms. S.Anitha (For R5)

ORDER

Heard Mr. G.Mohammed Aseef, Learned Counsel for the Petitioner, Mr. Veda Bagath Singh, Learned Special Government Pleader, who takes notice for the First to Fourth Respondents and Ms. S.Anitha, Learned Counsel, who takes notice for the Fifth Respondent.

2. Having regard to the nature of order proposed to be passed in the Writ Petition, which would not cause any prejudice to the Sixth Respondent, notice to him is dispensed with.



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3. The Petitioner and the Sixth Respondent have been elected as President and Vice-President respectively of Senthamangalam Panchayat and as per Section 188(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), they have to jointly sign all cheques of the funds of that Panchayat. Taking note of the non co-operation between the Petitioner and the Sixth Respondent in signing the cheques of the funds in the bank account of the Panchayat, the Third Respondent by Proceedings in Na.Ka. No. A3/271/2023 dated 17.05.2023 had transferred those powers to the Fifth Respondent, which was challenged by the Petitioner in the Writ Petition in W.P. No. 20046 of 2023 before this Court and it was disposed by order dated 14.07.2023 holding as follows:-

“15. Accordingly, the writ petition is allowed by setting aside the order impugned in this writ petition. The 1st respondent is directed to issue a Show Cause Notice to the petitioner and Vice President of the Panchayat and conduct an enquiry with regard to allegations of non-cooperation made by the petitioner. Based on the findings on enquiry, it is open to the 1st respondent to proceed further in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.”



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The Third Respondent in furtherance to that order had conducted enquiry with the Petitioner and the Sixth Respondent and on recording their respective undertaking to co-operate for signing cheques of the funds in the bank accounts of the Panchayat, has passed separate orders in Na.Ka. No. A3/271/2023 dated 31.08.2023 restoring those powers to them. However, the Petitioner has challenged the same insofar as it pertains to the Sixth Respondent in this Writ Petition.

4. 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 authorised by the Village Panchayat, would be conferred with the power to sign



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the cheques. The Government of Tamil Nadu has also issued G.O. Ms. No. 92,

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



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President, as the case may be) to jointly operate the account along with the

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

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 v. 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



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panchayat to function (either by neglecting his duties or by

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



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188(3) of the Act, and the only recourse which can be taken to is under Section 206. It may be noted that Section 206(2) of the Act states that before removing the Vice-President the procedure mentioned in sub-sections (2) to (13) of Section 205 has to be complied with, and that procedure is a cumbersome, time consuming one. Surely for signing every cheque it would be impracticable to resort to that procedure. If the conclusion of the learned single Judge that for refusal to sign cheques action could be taken under Section 206(3) of the Act for removal of the Vice President (or President, as the case may be) the time bound programmes like Village Panchayat, ear-marked grant account like Sampoorana Grama Yojana Yojana Scheme (Food for work), Village Panchayat Scheme Fund Account, etc. will lapse if the funds are not utilized within the time stipulated, since the procedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome.

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



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(President, as the case may be) (which need not be a personal 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.”

5. In view of the aforesaid legal position, which governs the controversy involved in this case, there does not appear to be any infirmity in that order warranting interference by this Court in the exercise of its discretionary powers of judicial review under Article 226 of the Constitution. In the event of any future dispute arising between the Petitioner and the Sixth Respondent regarding the signing of the cheques for the funds in the bank account of the Panchayat, the following procedure would have to be resorted to by the parties:-



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- (i) if the Sixth Respondent does not intend to sign any cheque sent by the Petitioner, the reasons for the same shall be communicated in writing within a working day along with the copy to the Third Respondent;
- (ii) in the event that the Petitioner is of the view that the reasons stated by the Sixth Respondent for not signing the cheque is not acceptable, the matter shall be immediately brought to notice of the Third Respondent, who shall thereafter conduct an enquiry as to the correctness of the rival claims of the Petitioner and the Sixth Respondent;
- (iii) if the Third Respondent is satisfied that the objection of the Sixth Respondent is justified, no action would be required to be taken against her;
- (iv) in the event it is found that the contention of the Sixth Respondent is untenable, necessary orders shall be passed empowering the authorized member of the Village Panchayat to sign that particular cheque in her place; and
- (v) such course of action shall be followed in respect of each cheque that is not signed by the Sixth Respondent.



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In the result, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

03.10.2023

Maya

Index: Yes/No

NCC : Yes/No

Note: Issue order copy by 08.01.2024.

To

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P.D. AUDIKESAVALU, J.

Maya

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