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W.P. No. 31002 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2023

CORAM

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

W.P. No. 31002 of 2023

and

W.M.P. Nos. 30647 and 30648 of 2023

1. V.Kalaiselvi

2. Venilla

... Petitioners

-VS-

1. The Inspector of Panchayat /District Collector
Thiruvannamalai District
Thiruvannamalai.

2. The Assistant Director of Panchayats
Thiruvannamalai District.

3. The Block Development Officer (Village Panchayats)
Chengam Panchayat Union
Anthanoor Village
Thiruvannamalai District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the order passed in Se.Mu.No.3840/2022/A2/O.E.(Oo)Thi.Ko(01) dated 18.10.2023 on the file of the First Respondent and quash the same.



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For Petitioners : Mr. L.P.Shanmugasundaram

For Respondents : Mr. U.Baranidharan, AGP

ORDER

Heard Mr. L.P.Shanmugasundaram, Learned Counsel for the Petitioners, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First to Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The First and Second Petitioners have been elected as President and Vice-President respectively of Anthanoor Panchayat in Chengam Taluk of Tiruvannamalai District and as per Section 188(3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act' for short), they are joint signatories to sign cheques of the funds in its bank account. According to the First Respondent, taking note of the situation that the Petitioners were high-handedly withdrawing the funds from the bank accounts of the Panchayat without informing the other Ward Members about the financial and other important matters, it had become necessary to invoke the emergency powers under Section 203 of the Act, which reads as follows:-



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“203. Emergency powers of Collector and Inspector.- Subject to

such control as may be prescribed, the Inspector or the Collector may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act which a Panchayat or Executive Authority or Commissioner or Secretary is empowered to execute or do and the immediate execution or doing of which is in his opinion necessary for the safety of the public and may direct that the expense of executing such work or doing such act shall be paid by the person having the custody of the Village Panchayat Fund or the Panchayat Union (General) Fund or the District Panchayat (General) Fund in priority to any other charges against such Fund except charges for the service of authorised loans.”

In the exercise of the said powers, the First Respondent by Proceedings in Na. Ka. No. 3840/2022/A2 VuE(Voo)-Thi.Ko-(01) dated 18.10.2023 had nominated the Third Respondent and the Zonal Deputy Block Development Officer to sign the cheques of the funds in the bank account of the Panchayat in the place of the First and Second Petitioners respectively, which is assailed in this Writ Petition.



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3. This Court at the time of admission on 26.10.2023 has passed the following self-explanatory order:-

“2. The Learned Counsel for the Petitioners submits that, absolutely no notice whatsoever was issued prior to passing of the impugned order. Learned Counsel for the Petitioners would submit that, it is now been settled that unless an opportunity of being heard is given, the cheque signing power cannot be taken away.

3. Upon perusal of the impugned order, there is no reference of show cause notice, even though Learned Special Government Pleader wants time to get instructions as to whether any notice has been issued or not. Considering the facts and circumstances, there shall be an order of interim stay till 07.11.2023.”

4. Before proceeding further, 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



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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 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,



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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 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



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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 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*



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well as G.O. Ms. No. 92 dated 26.03.1997 can be read

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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 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 Yojgas 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



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very elaborate and cumbersome.

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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 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. Having regard to the aforesaid dictum, which governs the controversy involved, when the President and the Vice-President of the Panchayat have not



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got the approval of the other members of the Panchayat in its meeting for

spending from the funds of the Panchayat, it would follow that any such payment made by them would be unauthorized and they may be liable to be removed from office following the prescribed procedure under Sections 205 and 206 respectively of the Act, which mandates affording opportunity of hearing to them in consonance with the principles of natural justice. However, they cannot be normally deprived of their right to exercise the powers of the President and Vice-President, as the case may be, till the prescribed procedure for their removal from office has been duly carried out. In that event, the proper course of action in the interregnum would be to ensure that the drawal of cheques by them from the funds of the Panchayat in its bank accounts has been duly authorized by taking the requisite measure of informing the concerned bank that payments should not be effected through cheques from the bank accounts of the Panchayat without supporting resolution from the majority of the members of the Panchayat at its meeting. It must be highlighted here that it is only when the reasons stated by the President or the Vice-President of the Panchayat, as the case may be, for not signing the cheque is found untenable that the Inspector is empowered to authorize a member of the Panchayat to sign that particular cheque in the place of the President or Vice-President of that Panchayat, as the case may be, who has refused to sign the particular cheque.



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Moreover, it is only when no member of the Panchayat has been authorized to sign in that regard, such powers could be conferred on the Block Development Officer or the Zonal Deputy Block Development Officer, as the case may be. At the same time, it must be noticed that the emergency powers of the Inspector under Section 203 of the Act could be exercised only when it is immediately necessary for execution of any work relating to the Panchayat or for the safety of the public. In other words, it is only when there is total non-cooperation from the entire members of the Panchayat to perform any immediate work or to meet an expenditure that cannot brook any delay that the Inspector could authorize the funds of the Panchayat to be drawn from its bank account for the specified purpose through persons other than the members of that Panchayat. Consequently, when it has not been shown that the the said process has been followed in this case, it is not possible to sustain the impugned order in Se.Mu.No.3840/2022/A2/O.E.(Oo)Thi.Ko(01) dated 18.10.2023 passed by the First Respondent, which shall stand quashed with the clarification that the First Respondent, if such necessity arises in future, is not precluded from taking action in the aforesaid manner in accordance with law.



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WEB COPY In the upshot, the Writ Petition is ordered on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 08.04.2024.

Maya

To

1. The Inspector of Panchayat /District Collector
Thiruvannamalai District
Thiruvannamalai.
2. The Assistant Director of Panchayats
Thiruvannamalai District.
3. The Block Development Officer (Village Panchayats)
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P.D. AUDIKESAVALU, J.

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