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W.P. No. 488 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM

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

**W.P. No. 488 of 2024
and
W.M.P. No. 508 of 2024**

N.Usha

... Petitioner

-VS-

1. The Director
Tamil Nadu Rural Development and
Panchayat Department
Chennai - 600015.
2. The District Collector
/Inspector of Panchayat
Thiruvallur.
3. The Assistant Director (Panchayat)
Thiruvallur.
4. The Block Development Officer
Gummidipoondi Panchayat Union
Gummidipoondi.
5. M.Soundari

... 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 records of the impugned order passed by the Second Respondent in Na.Ka. No. 1748/2021/A3 dated 17.11.2023 and quash the same and further direct the Second Respondent to restore the cheque signing power to the Petitioner.



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For Petitioner : Mr. M.Naresh and
Ms. Keerthana R.Shenoi

For Respondents : Mr. S.Prabhakaran, GA (RR1 to 3)
Mr. T.Venkatesh Kumar (R4)
R5-No appearance

ORDER

Heard Mr. M.Naresh and Ms. Keerthana R.Shenoi, Learned Counsel for the Petitioner, Mr. S.Prabhakaran, Learned Government Advocate appearing for the First and Second Respondents, Mr. T.Venkatesh, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner and the Fifth Respondent have been elected as President and Vice-President respectively of Eguvarpalayam Panchayat in Gummidipoondi Taluk of Thiruvallur 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 Petitioner and the Vice-President of the Panchayat were not co-operating with each other for signing the cheques of the funds in its bank account, it had



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become necessary to invoke the emergency powers under Section 203 of the Act, which reads as follows:-

“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. 1748/2021/A3 dated 17.11.2023 had nominated the Fourth 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 Petitioner and the Fifth Respondent respectively, which is assailed in this Writ Petition.



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3. 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 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



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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 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,



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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 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



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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 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



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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 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 (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*



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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. Having regard to the aforesaid dictum, which governs the controversy involved in this Writ Petition, the following position would emerge:-

- (i) if the Fifth 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 First Respondent;
- (ii) in the event that the Petitioner is of the view that the reasons stated by the Fifth Respondent for not signing the cheque is not acceptable, the matter shall be immediately brought to notice of the First Respondent, 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 Fifth 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 Fifth Respondent is untenable, necessary orders shall be passed empowering the authorized member of the Village Panchayat to sign that particular cheque in her



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place; and

(v) such course of action shall be followed in respect of each cheque that is not signed by the Fifth Respondent.

5. It must be highlighted here that it is only when the reasons stated by the Petitioner or the Fifth Respondent, as the case may be, for not signing the cheque is found untenable that the First Respondent is empowered to authorize a member of the Panchayat to sign that particular cheque in the place of the Petitioner or the Fifth Respondent, who has refused to sign the particular cheque. 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. Consequently, when the First Respondent has not followed the said procedure, it is not possible to sustain the impugned order in Na. Ka. No. 1748/2021/A3 dated 17.11.2023 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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In the upshot, the Writ Petition is disposed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 04.04.2024.

Maya

To

1. The Director
Tamil Nadu Rural Development and
Panchayat Department
Chennai - 600015.
2. The District Collector
/Inspector of Panchayat
Thiruvallur.
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P.D. AUDIKESAVALU, J.

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