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W.P. No. 16723 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

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

W.P. No. 16723 of 2020

and

W.M.P. Nos. 20741 of 2020, 3698 of 2022 and 2043 of 2024

Lakshmi Kamaraj

... Petitioner

-VS-

1. The District Collector,
Collector Office,
Perambalur – 621 212.

2. R.Raja

... 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 on the file of the First Respondent in Na. Ka. 1960/2020/A3 dated 20.10.2020 and quash the same as illegal, incompetent and without jurisdiction and further direct the First Respondent not to interfere with the Petitioner's right as the Vice Chairman.

For Petitioner : Mr. Sunny Sheen
for Ms. V.Srimathi

For Respondents : Mr. V.Ravi,
Special Government Pleader (for R1)

Mr. P.Balathandayutham (for R2)



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ORDER

Heard Mr. Sunny Sheen, Learned Counsel for the Petitioner, Mr. V.Ravi, Learned Special Government Pleader appearing for the First Respondent and Mr. P.Balathandayutham, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent and the Petitioner have been elected as President and Vice-President of Sithali Village 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 cheques of the funds in its bank account. According to the First Respondent, the Petitioner was not co-operating in signing the cheques and taking note of that situation, the said Village Panchayat has passed Resolution No. 11 of 2020 dated 12.10.2020 authorizing one of its Ward Member, viz., Perumal, to sign the cheques in the place of the Petitioner. In that backdrop, the First Respondent by Proceedings in Na. Ka. No. 1906/2020/A3 dated 20.10.2020 has authorized the said Perumal 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.



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3. This Court at the time of admission on 30.11.2020 had granted interim stay for four weeks, and the Second Respondent has filed W.M.P. No. 3698 of 2022 to vacate that interim order.

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 authority.

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



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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, 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



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‘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 -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.

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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 well as G.O. Ms. No. 92 dated 26.03.1997 can be read harmoniously in the manner mentioned above. We do not agree*



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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 very elaborate and cumbersome.

27. *We would however point out that before granting prior*



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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.”

6. 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, she must communicate the reasons for the same in writing to the Second Respondent within a working day along with a copy to the First



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Respondent;

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- (ii) in the event that the Second 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, who shall thereafter conduct an enquiry as to the correctness of the rival claims of the Petitioner and the Second 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 her 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, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No
NCC: Yes/No



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Note: Issue order copy by 04.04.2024.

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To

The District Collector,
Collector Office,
Perambalur – 621 212.



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P.D. AUDIKESAVALU, J.

vjt

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