IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 05.09.2024

DELIVERED ON 12.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WP.Nos.27855, 27967 & 27968/2022 & WMP.Nos.27149, 27266 & 27267/2022

P.Rangaraj ... Petitioner in WP.No.27855/2022

D.Palaniammal ... Petitioner in WP.No.27976/2022

T.Vimala ... Petitioner in WP.No.27968/2022

Vs.

1.The Director/Commissioner of Rural Development
Panagal Building, 15, Jeenis Road
Saidapet, Chennai.

2.The District Collector/Inspector of Panchayat
Coimbatore District, Coimbatore.

3.The Block Development officer

Periyanaickenpalayam Panchayat Union
Periyanaickenpalayam, SRKU Post
Coimbatore 641 020. ... RR 1 to 3 in WP.No.27855/2022

1.The Inspector of Panchayats/
The District Collector,
Coimbatore District, Coimbatore.

2.The Block Development Officer
office of BDO, Madhukarai
Coimbatore District. ... RR 1 & 2 in WP.No.27967/2022

1.The Director
Panchayat Raj & Rural Development Department
Panagal Maligai, Saidapet, Chennai 600 015.

2.The District Collector
Coimbatore District, Coimbatore.

3.The Block Development Officer
Karamadai Union, Karamadai Taluk
Coimbatore District. ... RR 1 to 3 in WP.No.27968/2022

Prayer in WP.No.27855/2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records of the 2nd respondent in connection with the proceedings passed by him in Na.Ka.No.2574/2021/A3 dated 26.09.2022 and quash the same as illegal.

Prayer in WP.No.27967/2022 : Writ Petition filed under Article 226 of the

Constitution of India for issuance of Writ of certiorari calling for the records pertaining to the impugned order dated 26.09.2022 passed by the 1st respondent in Na.Ka.No.2927/2021/A3 and quash the same.

Prayer in WP.No.27968/2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records pertaining to the proceedings of the 2nd respondent in Na.Ka.No.1389/2021/A3 dated 26.09.2022 and quash the same as illegal and ultra vires.

For Petitioner in WP.Nos.27855/2022	: Mr.V.Singaravelan, Senior counsel for M/s.V.Ambika
For Petitioner in WP.No.27967/2022	: Mr.N.Srinivasan for Mr.M.N.Balakrishnan
For Petitioner in WP.Nos.27855/2022	: Mr.V.Singaravelan, Senior counsel for Mr.R.Jayaprakash
For Respondents in all writ petitions	: Mr.T.Ravindran, AAG assisted by Mr.M.R.Gokul Krishnan, AGP

COMMON ORDER

S.S.SUNDAR, J.,

(1)All the above writ petitions are filed challenging the proceedings of the District Collector who is the Inspector of Panchayats under the Tamil Nadu Panchayats Act, 1994 [hereinafter referred to as "the Act"], withdrawing the cheque signing power of the petitioners by exercising the emergency power under Section 103 of the Act.

(2)Since common issue arises for consideration in all the three writ petitions, they are disposed of by this common order.

(3)Brief facts that are relevant for the disposal of all the three writ petitions with reference to each writ petition are given hereunder:-

(a)WP.No.27855/2022:-

i. The petitioner in this writ petition is the elected President of Somayampalayam Panchayat in the election conducted in the year 2020 and is continuing as such till date. It is the specific case of the petitioner that he contested the election as an independent candidate and later, joined AIADMK Party in April 2020. It is also his specific case that he was invited from various sources to join the ruling party and the petitioner refused to switch over. The petitioner received a show cause notice in March 2022 under Section 205 of the Act making some allegation and he submitted a detailed explanation on 07.10.2022 denying all the charges leveled against him. Even though there was no further proceedings pursuant to the issuance of the said notice under Section 205 of the Act, the 2nd respondent passed an order cancelling the cheque signing power of the petitioner on temporary basis and conferring the said authority in favour of the 3rd respondent in exercise of his emergency power in terms of Section 203 of the Act.

ii. It is the case of the petitioner that the order impugned is not only in violation of principles of natural justice but also contrary to the Government Order vide G.O.Ms.No.148 dated 31.05.2001 which mandates that a report with reasons has to be forwarded to the Director / Commissioner of Rural Development and the concerned Panchayat for withdrawing the cheque signing power. Even though an appeal is filed by the petitioner before the 1st respondent, pointing out that the order is biased and suffers from lack of mala fides, the grievance of the petitioner is that the 1st respondent has not passed any order in the appeal.

(b)WP.No.27967/2022:-

i. The petitioner was elected as President of Malumichampatty Panchayat on 06.01.2020 and the said Panchayat is one of the biggest Panchayat in Coimbatore District. It is the specific case of the petitioner that at the instance of the defeated candidate of the ruling party, the 1st respondent/District Collector, due to pressure, issued a show cause notice dated 01.04.2022 under Section 205 of the Act after making allegations of misappropriation of funds and lack of transparency etc. The petitioner submitted a detailed explanation on 21.04.2020 denying the charges. Though the petitioner was called for an enquiry by the 1st respondent, there was no further proceedings against the petitioner under Section 205 of the Act. However, the 1st respondent vide impugned order dated 26.09.2022, temporarily cancelled the cheque signing power of the petitioner in exercise of his emergency power under Section 203 of the Act. Stating that the petitioner was not given an opportunity before passing the impugned order, it is contended that the impugned order is in violation of principles of natural justice.

ii. It is further contended by the petitioner that the 1st respondent cannot invoke the emergency power for cancelling the cheque signing power of the petitioner. Referring to Section 188[3] of the Act, it is contended by the petitioner that the District Collector has no power to invoke Section 203 of the Act for withdrawing or cancelling the cheque signing power of the elected President or Vice President of the Panchayat and conferring the cheque signing power to the 2nd respondent /Block Development Officer.

(c)WP.No.27968/2022:-

i. The petitioner was elected as the President of Chikkadasampalayam Panchayat in Coimbatore District in the election held in the year 2019. The petitioner assumed office and took charge during January 2022. It is the case of the petitioner that the 2nd respondent namely the District Collector who is also the Inspector of Panchayats, issued a show cause notice on

21.03.2022 with false and baseless allegations under Section 205 of the Act. It is his case that he appeared before the District Collector and submitted his explanation. Despite submitting valid explanation to the show cause notice, it is stated by the petitioner that no further enquiry or other proceedings continued under Section 205 of the Act. However, the 2nd respondent passed the impugned order dated 26.09.2022 cancelling the petitioner's cheque signing power / authority and conferring the said power to the 3rd respondent / Block Development Officer. The present writ petition is filed challenging the order of the District Collector, cancelling the cheque signing power of the elected President namely the petitioner herein and conferring the said authority in favour of the 3rd respondent by exercising the emergency power under Section 203 of the Act.

(4)In all the three cases, the orders are passed by the District Collector, Coimbatore, in exercise of his emergency power under Section 203 of the Act. The contents of the impugned orders in all the three cases are almost identical and in all these cases, the District Collector has elaborately discussed the scope of Section 203 of the Act by referring to the judicial pronouncements of this Court in ***J.A.Karunanithi Vs. District Collector, Thiruvannamalai District [2011 [5] MLJ] 766] ; P.Suganthi Vs. District Collector-cum-Inspector of Panchayat, Thoothukudi District [2011 [2] CTC 381] ; S.Perumal Vs. District Collector-cum-Inspector of Panchayat [2011 [3] CTC 869] ; and Mariappan Vs. The Inspector of Panchayat-cum-District Collector [2014 WLR 640].*** While assuming his authority under Section 203 of the Act on the basis of judicial precedents, the District Collector, referring to general allegations about the writ petitioners while acting as Presidents of respective Panchayats, stated that in view of the conduct of the Presidents of Panchayats causing revenue loss to the Local Body, the District Collector has to exercise his emergency power to cancel the cheque signing authority on temporary basis and to confer cheque signing power in favour of 3rd respondent, so that the regular day-to-day administration of the respective Panchayats should not be affected by withdrawal of cheque signing authority of the writ petitioners.

(5)The learned counsels appearing for the petitioners relying upon the individual orders submitted that there is a common pattern and modus operandi in all the three cases and within a short time after the writ petitioners were elected as Presidents, the cheque signing authority has been temporarily cancelled by invoking the emergency power of the District Collector-cum-Inspector of Panchayats, under Section 203 of the Act. In all these cases, no show cause notice was given to the petitioners before passing the impugned orders.

(6)The District Collector has filed a counter affidavit in WP.No.27855/2022 wherein he highlighted the show cause notice sent to the petitioner in the said writ petition under Section 205 of the Act. It is the case of the District Collector that based on the Report of the Assistant Commissioner of Coimbatore District, Rural Development [Audit], the District Collector found that serious charges against the writ petitioner are proved and the District Collector invoked the emergency power under Section 203 of the Act to revoke the cheque signing power of the Panchayat Presidents to ensure proper and effective administration of the Panchayat.

(7)The 3rd respondent in WP.No.27968/2022 has filed a counter affidavit almost in tune with what the District Collector-cum-Inspector of Panchayat has stated.

(8)Heard the respective learned counsels appearing for the petitioners and the learned Additional Advocate General appearing for the respondents.

(9)The common issue that arise for consideration in all the writ petitions is whether the District Collector, as Inspector of Panchayat, can exercise his emergency power under Section 203 of the Act to revoke the cheque signing power / authority of the elected President or Vice President of the Panchayat and whether such emergency power to revoke the cheque signing authority can be exercised without issuing a show cause notice giving an opportunity to the President or Vice President of the Panchayat.

(10)In all the three writ petitions, it is admitted that the impugned orders are passed without issuing show cause notice to the writ petitioners before withdrawing or revoking the cheque signing authority of the writ petitioners who are the elected Presidents of the respective Panchayats. One of the contentions raised by the petitioner in one of the writ petitions by referring to the Tamil Nadu Panchayat [Control of the Emergency Power of Collector or Inspector] Rules, 2001 [hereinafter referred to as "the Rules, 2001"], vide G.O.Ms.No.148 dated 31.05.2001. Rule 3 of the said Rules reads as follows:-

> ***"3.Intimation after exercise of emergency powers:-***
>
> *Collector or the Inspector, shall, after exercise of the powers conferred by Section 203 of the Act, be reported forthwith to the Director of Rural Development with the reasons in full, for the exercise of such powers and a copy of the report shall, at the same time, be sent to the Panchayat for information."*

(11)Therefore, the contention of the petitioners is that the District Collector has not reported forthwith to the Director of Rural Development about the reasons for exercising emergency power to revoke the cheque signing authority of the President. Therefore, it is contended that the impugned orders are also bad for non-compliance of the statutory requirement of Rule 3 of the Rules, 2001.

(12)The common issue in all these cases is also whether power under Section 203 of the Act can be exercised to suspend or revoke or cancel the cheque signing authority of the elected President. This Court is of the view that the matter is no more *res integra* in view of the judgments of this Court.

(13)In ***Pugazhendran, President, Brammapuram Village Panchayat and Others Vs. B.G.Balu and Others*** reported in ***AIR 2005 Mad 370,*** a Division Bench of this Court considered the scope of Sections 188[3], 203 and 205 of the Act. That was a case where a specific ground was raised that the order revoking cheque signing power of the Vice President of the Panchayat is violative of Section 188[3] of the Act. It was contended by the writ petitioner therein that he was always available and there was no delay on his part to sign the cheque and therefore, the writ petitioner contended that there is no scope for invoking the power under Section 203 of the Act to revoke the cheque signing authority of the Vice President. A learned Single Judge of this Court held that unless the Vice President is absent, a member cannot be authorised by the Village Panchayat to sign the cheque. It was held by the Writ Court that refusal or omission to sign a cheque does not amount to absence of the Vice President and that such refusal can only attract Section 206 of the Act and it does not amount to 'absence' under Section 188[3] of the Act. Aggrieved by the order of the learned Single Judge of this Court, holding that before granting prior approval to the Resolution of the Village Panchayat authorising any other member to operate the Account along with the President, the Inspector of Panchayat, namely, the District Collector, has to give a notice to the Vice President giving him an opportunity of hearing, an appeal was filed. Since no notice was issued to the writ petitioner therein who was the Vice President, the Division Bench dismissed the appeal. However, the Division Bench considered the position, what would if with ulterior motive the President or Vice President refuses to sign the cheque and whether this situation be treated as absence of Vice President for the purpose of Section 188[3] of the Act. It is relevant to extract the following paragraphs of the said judgment:-

> "**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 Lachmcm 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 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 President (or*

President, as the case may be) the time bound programmes like Village Panchayat, ear-marked grant account like Sampoorna 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 pro cedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome.

......

29. *In the present case a perusal of the order of the District Collector. Vellore (Inspector of Panchayats, Vellore) dated 07.11.2002 cancelling the power of the Vice President to sign the panchayat's cheques as joint signatory, shows that the District Collector has merely acted on the recommendation of the Block Development Officer. Katpadi Panchayat Union, and he has not applied his mind independently to the facts of the case, and he has not come to any independent conclusion that the refusal to sign cheques by the Vice President was mala fide or for ulterior motives. The District Collector, Vellore without issuing notice to the petitioner appears to have mechanically accepted the report of the Block*

Development Officer. Katpadi Panchayat Union, which in our opinion was not proper.

30. *In paragraph-4 of the petitioner's affidavit it has been specifically alleged that no notice was given by the District Collector before passing the impugned order, and this allegation has not been denied by the Collector in his counter affidavit. In our opinion, the District Collector's order dated 7.11.2002 has civil consequences, and hence it was incumbent on him to give a show cause notice to the petitioner before passing it, which was not done. Hence, in our opinion, there was violation of the principles of natural justice, and the impugned order becomes illegal."*

(14)From the said judgment, it is seen that the power under Section 188[3] of the Act is wide enough to cover a situation to revoke the cheque signing authority of President of Vice President to any other member authorised by the Village Panchayat at a Meeting. Though the emergency power can be invoked to withdraw the cheque signing authority of the Vice President or President in a case where any one of them refuses to sign the cheque by treating the person as absent, the situation in the present case is different. However, the Division Bench has held that before withdrawing the cheque signing power of President or Vice President a show cause notice is mandatory.

(15)Before considering the other judgments on the point, it is worthwhile to refer to the following provisions of the Tamil Nadu Panchayats Act, 1994:-

> ***__Section 188:-__Village Panchayat Fund.-*** *1 [(1)] The receipts which shall be credited to the Village Panchayat Fund shall include-*
>
> *[(a) the house-tax and any other tax or any cess or fees levied under sections 171 and 172;]*
>
> *[(b) the profession tax levied by Village Panchayats under Chapter IX-A;]*
>
> *(c) [***]*
>
> *[(d) the proportionate share of the proceeds of the local cess, local cess surcharge, surcharge on the duty on transfers of property and entertainment tax received by the Village Panchayat under Sections 169 and 175-A;]*
>
> *(e) [***]*
>
> *(f) the taxes and tolls levied in the village under Sections 117 and 118 of the Tamil Nadu Public Health*

Act, 1939 (Tamil Nadu Act VIII of 1939);

(g) fees levied in public markets classified as Village Panchayat markets after deducting the contributions, if any, paid by the Village Panchayat to the Panchayat Union Council on the scale fixed by the Government;

(h) the contribution paid to the Village Panchayat by Panchayat Union Councils in respect of markets classified as Panchayat Union markets;

(i) fees for the temporary occupation of village sites, roads and other similar public places or parts thereof in the Panchayat Village ;

(j) fees levied by the Village Panchayat in pursuance of any provisions of this Act or any rule or order made thereunder; Panchayat; Government; Panchayat;

(k) income from endowments and trusts under the management of the Village

(l) the net assessment on service inams which are resumed by the

(m) [***]

(n) income derived from Panchayat Village

fisheries; (o) income derived from ferries under the management of the Village(p) unclaimed deposits and other forfeitures;

(q) a sum equivalent to the seigniorage fees collected by the Government every year from persons permitted to quarry for road materials in the Panchayat Village:

(r) all income derived from porambokes the user of which is vested in the Village Panchayat;

(s) where the Panchayat Village is in a ryotwari tract, all income derived from trees standing on porambokes although the user of the porambokes is not vested in the Village Panchayat;

(t) income from leases of Government property obtained by the VillagePanchayat;

(u) fines and penalties levied under this Act by the Village Panchayat or at the instance or on behalf of the Village Panchayat;

(v) all sums other than those enumerated above which arise out of, or are received in aid of or for expenditure on any institutions or services maintained or financed from the Village Panchayat fund or managed by the Village Panchayat;

[(w) such other moneys as may be specified by the Government.

(2)Notwithstanding anything contained in sub-section (1), the Government may direct any Village Panchayat to constitute separate funds to which shall be credited such receipt as may be specified and such funds shall be applied and disposed of in such manner as may be prescribed.

(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 Vice President and in the absence of the President or Vice President, 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.]

<u>Section 203:-</u>*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 1 [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*

<u>Section 204:-</u>Power to take action in default of a Village Panchayat, President or Executive Authority, etc. – *(1) If at any time it appears to the Inspector that a Village Panchayat, President or Executive Authority or that a Panchayat Union Council or its Chairman or Commissioner or a District Panchayat or its Chairman or 1 [Secretary], has made default in performing any duty imposed by or under this or any other Act, he may, by order in writing, fix a period for the performance of such duty.*

(2) If such duty is not performed within the period so fixed, the Inspector may appoint some person to perform it and may direct that the expense of performing it shall be paid by the person having the

custody of the Village Panchayat Fund or the Panchayat Union Fund or the District Panchayat (General) Fund as the case may be, in priority to any other charges against such Fund except charges for the service of authorised loans.

(3) If on a representation in writing made by the President, the Inspector is satisfied that due to the non-co-operation of the members with the President, the Village Panchayat is not able to function, the Inspector may, by notification, authorize the President to perform, subject to the control of the Inspector, such of the duties imposed upon the Village Panchayat by law and for such period not exceeding six months as may be specified in such notification. During the period for which the President is so authorised, there shall be no meeting of the Village Panchayat.

(4)If on a representation in writing made by the Chairman, the Government are satisfied that due to the non-co-operation of the members with the Chairman, the Panchayat Union Council or the District Panchayat, as the case may be, is not able to function, the Government may, by notification, authorise the Chairman to perform, subject to the

control of the Government or any officer authroised by the Government in this behalf, such of the duties imposed upon the Panchayat Union Council or the District Panchayat, as the case may be, by law and for such period not exceeding six months as may be specified in such notification. During the period for which the Chairman is so authorised, there shall be no meeting of the Panchayat Union Council or the District Panchayat.

Section 205:-. ***Removal of President.-*** *(1) The Inspector- (a) of his own motion, or (b) on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Village Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Village Panchayat, is satisfied that the President willfully omits or refuses to carry out or disobeys any provision of this Act, or any Rule, bye-law, Regulation or lawful order made or issued under this Act or abuses any power vested in him, the Inspector shall, by notice in writing, require the President to offer within a specified date, his explanation with respect to this acts of omission or* *commission mentioned in the notice.*

(2) If the explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice. If no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in sub-section (1) and the explanation of the President if received within the specified date with a proposal for the removal of the President for ascertaining the views of the Village Panchayat.

(3) The Tahsildar shall then convene a meeting for the consideration of the notice and the explanation, if any and the proposal for the removal of the President, at the office of the Village Panchayat at a time appointed by the Tahsildar.

(4) A copy of the notice of the meeting shall be caused to be delivered to the President and to all the members of the Village Panchayat by the Tahsildar atleast seven days before the date of the meeting.

(5)The Tahsildar shall preside at the meeting convened under this section and no other person shall

preside thereat. If, within half an hour appointed for the meeting, the Tahsildar is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the members and the President by the Tahsildar under subsection (6).

(6) If the Tahsildar is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall be not later than thirty days from the date so appointed for the meeting under sub-section (3). Notice of not less than seven clear days shall be given to the members and the President of the time appointed for the adjourned meeting.

(7)Save as provided in sub-sections (5) and (6), a meeting convened for the purpose of considering the notice and the explanation, if any and the proposal for the removal of the President under this section shall not for any reason, be adjourned.

(8)As soon as the meeting convened under this section is commenced, the Tahsildar, shall read to the Village Panchayat the notice of the Inspector and the explanation if any, of the President 1 [and the

proposal for the removal of the President], for the consideration of which it has been convened. 2 [(8-A) There shall be no debate in any meeting under this section].

(9)The Tahsildar shall not speak on the merits of the notice or explanation nor shall be entitled to vote at the meeting.

(10)The views of the Village Panchayat shall be duly recorded in the minutes of the meeting and a copy of the minutes shall forthwith on the termination of the meeting be forwarded by the Tahsildar to the Inspector.

(11)The Inspector may, after considering the views of the Village Panchayat in this regard, in his discretion either remove the President from office by notification with effect from a date to be specified therein or drop further action.

(12)The Government shall have power to cancel any notification issued under subsection (11) and may, pending a decision on such cancellation, postpone the date specified in such notification.

(13) Any person in respect of whom a

notification has been issued under subsection (11) removing from the office of President shall, unless the notification is cancelled under sub-section (12), be ineligible for election as President until the expiry of three years from the date specified in such notification as postponed by the order, if any, issued under sub-section (12)]."

(16)Another Division Bench of this Court in ***P.Suganthi Vs. District Collector-cum-Inspector of Panchayat, Thoothukudi District [2011 [2] CTC 381]***, has followed the judgment in ***Pugazhendran's case [cited supra].*** The Division Bench dealt with the case where the President of Kumaragiri Panchayat committed serious financial misdeeds and hence, a show cause notice was issued to the President of Panchayat calling for explanation as to why the cheque signing power of the President should not be transferred to the Block Development Officer. Following the judgment in ***Pugazhendran's case,*** the Division Bench has held as follows:-

> ***"14.****The principle laid down in the judgment would spell out a clear meaning that after affording an opportunity by issuing show cause notice to the Village President the transfer of cheque singing power is*

made, no infirmity could be found. In the instant case, after getting explanation from the appellant by issuing show cause notice, the 1st respondent passed the impugned order, and we don not find any infirmity in the order passed by the 1st respondent. Hence, we are not inclined to make any interference in the order passed by the learned Single Judge."

(17)Therefore, the power to revoke the cheque signing authority of the elected President under Section 203 of the Act is upheld with a reservation that the order cannot be passed without following principles of natural justice.

(18)A learned Single Judge of this Court in the order dated 30.04.2009 made in WP.[MD].Nos.1066 & 1067/2009 ***[S.Udayakumar Vs. The Block Development Officer and Others]*** has held as follows:-

"22.The power given to the Collector or Inspector was an emergency power to do certain acts in the interest of the panchayat. It was not an ordinary power to interfere in the affairs of the village panchayat. In case the village panchayat President or Executive Authority makes default in performing any of the duties imposed by or under the provisions of the Act, the Inspector was given powers under Section 204 of the Act to take appropriate action. The Collector or

Inspector was not obliged to use the emergency powers as a routine measure. There was nothing mentioned in Section 203 of the Act which authorises the Collector to divest the President of his cheque signing powers during the pendency of a proceeding under Section 205 of the Act. The President would be divested of his powers only in the event of an order passed under Section 205(11) of the Act. Unless and until a notification was issued under Section 205(11) of the Act, the President has to be permitted to exercise his powers as a President of the panchayat. The charge against the petitioner was not something related to his failure to sign the cheque along with the Vice President. The charges were acts of misappropriation warranting action under Section 205 of the Act. By way of the impugned proceeding, the Collector, in exercise of the powers under Section 203 of the Act, has divested the petitioner of his power to sign the cheque along with the Vice President. Not even a notice was issued to the petitioner before issuing such proceedings. It was only as a consequential proceedings initiated under Section 205 of the Act, the

Collector has issued the impugned proceedings divesting the petitioner of his power to sign the cheque. In any case, before divesting the petitioner of his power to sign the cheque, reasonable opportunity should have been given to him. It is not as if the moment action under Section 205 of the Act was taken against the President, he should be divested of the power to sign cheques. Section 203 of the Act is not intended for such purposes. It was only to tide over an emergency situation, power is given to the Collector under Section 203 of the Act. The said power cannot be used in an ordinary situation. In any case there was a clear violation of principles of natural justice also, as the petitioner was not given notice before divesting him of the power to sign the cheques."

(19)The judgment of the Division Bench in ***Pugazhendran's case [cited supra] [2005 [1] CTC 545]*** has been followed in several judgments of learned Single Judges of this court. Wherever the emergency power under Section 203 of the Act to cancel the cheque signing power of Panchayat President is invoked, this Court has upheld the decision, if the order withdrawing cheque signing authority is after following due process namely, issuing show cause notice and hearing the person concerned.

(20)In ***J.A.Karunanithi Vs. The District Collector and Others [2011 [5] MLJ 766]***, the Hon'ble Mr. Justice ***R.SUDHAKAR [as he then was],*** has followed the judgment of the Division Bench in ***P.Suganthi's case [cited supra]*** and held as follows:-

> *"7. Further, on going through the provisions of Section 203 of the Tamil Nadu Panchayats Act, 1994, it is apparent that the Collector, the Inspector of Panchayats has the power to direct or provide for the execution of any work or the doing of any act which a Panchayat or Executive Authority or Commissioner, etc., is empowered to execute or do and in exercise of such function and the Collector may direct that the expenses 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 etc. This provision presupposes the exercise of such power in cases of emergency under any contingency at the discretion of the Inspector of Panchayats. This power, however, will have to be exercised for good reasons.*

8.In the present case, in view of the allegations against the President of the Village Panchayat, supported by reasons, the cheque signing power alone has been taken away as an interim measure.

9.The exercise of such power is well within the power of the Inspector of Panchayats under Section 203 of the Tamil Nadu Panchayats Act. This Court finds no infirmity in the power exercised by the Collector, the Inspector of Panchayats, in accordance with Section 203 of the Act. The challenge to the said order on the ground of lack of jurisdiction, therefore, fails."

(21)His Lordship also followed his own judgment subsequently in ***S.Perumal Vs. The District Collector-cum-Inspector of Panchayats, Tiruvannamalai District and Others [2011 [3] CTC 869]***. What is to be noted is that in ***Suganthi's case,*** a show cause notice was issued before withdrawing the cheque signing power of President.

(22)In ***Logeswari Vs. The District Collector, Tiruchirappalli and Others [2013 [2] CTC 846]***, a learned Single Judge of this Court has held that the power under Section 203 of the Act is not intended to act as an authority to take disciplinary proceedings against the President or Vice President. Taking note of the likelihood of misuse of emergency power, the learned Single Judge has held as follows:-

> *"21. 21. The Collectors are very often exercising this power to take away the cheque signing powers of the President and Vice President. The power to sign cheque is a statutory power conferred on the President and Vice President under Sub-Section (3) of Section 188 of the Act. The President and the Vice President are under the general control of the village panchayat. The statutory power given to the President of the Panchayat or Vice President cannot be taken away by the Inspector of Panchayat, by exercising the emergency powers. Since the cheque signing facility is given by the statute, there should be a specific power conferred upon the Inspector of Panchayats to take away such power. So long as there are no specific provisions to take away the cheque signing power of the President or Vice President, the Collector cannot invoke incidental or emergent powers to divest the elected representatives of their statutory right.*
>
> ...

25.The law is, therefore, clear that the District Collector has no power under Section 203 of the Panchayat Act to take away the cheque signing power of the President and the Vice President."

(23)A learned Single Judge vide order dated 05.06.2014 in WP.[MD].Nos.2198 & 7637/2012 & 15564/2013 ***[N.Chidambaram Vs.The Block Development Officer, Panchayat Union]*** has held as follows:-

*"**DECLARATION OF LAW:-***

25.The law is, therefore, clear that the District Collector has no power under Section 203 of the Panchayat Act to take away the cheque signing power of the President and the Vice President."

(24)Again in ***Mrs.J.Saraswathi Vs. The Inspector of Panchayat/District Collector, Dharmapuri District, and Others [2015 SCC Online Mad 8024],*** a learned Single Judge, of this Court has held as follows:-

"5.As noticed above, the files do not disclose that any notice was issued to the petitioner nor the District Collector has taken a stand in the counter affidavit. In fact on a perusal of the files, the learned Additional Government Pleader also is not able to

show that any notice was issued to the petitioner and an opportunity was afforded. Hence, it is held that divesting of the power is unsustainable in law.

6.The writ petition is allowed and the respondent is directed to restore the cheque signing power in favour of the petitioner. Further, it is open to the 1st respondent to issue fresh notice and proceed against the petitioner, if the 1st respondent is of the opinion that the same is warranted. No costs. The connected MPs are closed."

(25)From the examination of the provisions of the Act as well as the precedents, we have above referred to, the conclusion inescapable is that the Inspector of Panchayat enjoins a power to revoke the cheque signing authority temporarily in case the circumstances contemplated under Section 203 of the Act exist. In a case where the President or Vice President refuses to sign cheque and thereby trying to delay execution of any work or doing of any act which a Panchayat or Executive Authority or Commissioner is empowered to execute. However, in a case where there are mere allegations of misappropriation, mismanagement or other allegations which warrant the Inspector of Panchayat to take action under Section 205 of the Act, the emergency power cannot be exercised under Section 203 of the Act to withdraw or suspend the cheque signing authority of elected President or Vice President of the Panchayat.

(26)Coming to the case on hand, the writ petitioners in all the writ petitions are elected Presidents of different Panchayats. In all the cases, there was no prior notice giving any opportunity to the writ petitioners. Therefore, the impugned orders are in violation of principles of natural justice and hence, they are liable to be quashed.

(27)It is also to be noted that the allegations against the writ petitioners do not warrant invocation of emergency power of Collector under Section 203 of the Act to suspend even temporarily the cheque signing authority of the President. The respondents in their counter affidavit has failed to satisfy the statutory requirement in tune with Rule 3 of the Rules 2001 before exercising the power under Section 203 of the Act.

(28)In the result, the **writ petitions are allowed and the impugned orders dated 26.09.2022 are quashed.** However, it is open to the respondents to initiate fresh proceedings if it is required in law after issuing show cause notice to the writ petitioners in the individual cases in compliance of principles of natural justice. It may be remembered that for invoking Section 203 of the Act by the respondents, there must be in a situation that warrants invocation of emergency power No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [K.R.S., J.]
12.09.2024

AP
Internet : Yes
Neutral Citation: Yes / No

To
1.The Director/Commissioner of Rural Development
Panagal Building, 15, Jeenis Road
Saidapet, Chennai.

2.The District Collector/Inspector of Panchayat
Coimbatore District, Coimbatore.

3.The Block Development officer
Periyanaickenpalayam Panchayat Union
Periyanaickenpalayam, SRKU Post
Coimbatore 641 020.

4.The Block Development Officer
office of BDO, Madhukarai
Coimbatore District.

5.The Block Development Officer
Karamadai Union, Karamadai Taluk
Coimbatore District.

S.S. SUNDAR, J.,
and
K.RAJASEKAR, J.,

AP

Common Order in
WP.Nos.27855, 27967 & 27968/2022

12.09.2024