

**(2014) 06 MAD CK 0336**

**Madras High Court (Madurai Bench)**

**Case No:** W.P. (MD) Nos. 2198 and 7637 of 2012 and 15564 of 2013 and M.P. Nos. 1, 1 and 2 of 2013 and 1 and 2 of 2013

N. Chidambaram

APPELLANT

Vs

The Block Development Officer,  
Panchayat Union Office

RESPONDENT

**Date of Decision:** June 5, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 243, 40
- Tamil Nadu District Municipalities Act, 1920 - Section 37
- Tamil Nadu Panchayats Act, 1994 - Section 188, 188(3), 203, 204, 205

**Citation:** (2014) 5 LW 170 : (2014) WritLR 928

**Hon'ble Judges:** R. Mahadevan, J

**Bench:** Single Bench

**Judgement**

@JUDGMENTTAG-ORDER

R. Mahadevan, J.

Since a common issue is involved in all these Writ Petitions, they were heard together and they are disposed of by means of this Common Order. The petitioner in W.P.[MD]. No. 2198 of 2012 was elected as the President of Poolam Panchayat Board, Poolam Village, Nanguneri Taluk, Tirunelveli District. As the Vice - President herein did not attend the Panchayat Board work and refuse to sign the panchayat cheque, the petitioner made a representation, on 19.01.2012, before the respondent seeking to take action against the Vice President and the same is pending consideration. Therefore, the petitioner has come forward to file W.P.[MD]. No. 2198 of 2012.

2. The petitioner in W.P.[MD]. No. 7637 of 2012 was elected as Vice-President of Poolam Panchayat Board, Poolam Village, Nanguneri Taluk, Tirunelveli District. The third respondent herein sent a communication, dated 02.02.2012, directing the

petitioner to submit his explanation as to why he is not signing the panchayat cheques. On 18.02.2012, the petitioner approached the third respondent and explained as to why he is refusing to act as a co-signatory to the cheques to be signed for and on behalf of the Panchayat. Having not satisfied with the explanation offered by the petitioner, the first respondent, by the impugned order, dated 04.05.2012, divested the power of cheque signing power of the petitioner. Questioning the same, the petitioner is before this Court with W.P.[MD]. No. 7637 of 2012.

3. The petitioner in W.P.[MD]. No. 2198 of 2012 and W.P.[MD]. No. 15564 of 2013 is one and the same. Challenging the order of the District Collector, Tirunelveli, dated 04.07.2012, taking away the cheque signing power of the petitioner under Section 188(3) of the Tamil Nadu Panchayats Act, 1994 [hereinafter referred to as "the Act"] and for a direction to the first respondent to restore the cheque signing power of the petitioner, W.P.[MD]. No. 15564 of 2013 has been filed.

4. The learned Senior Counsel appearing for the petitioner/president would submit that the first respondent has passed the impugned proceedings without issuing any notice and in violation of the principles governing the Panchayat Raj Institutions. The learned Senior Counsel contended that invoking Section 203 of the Act, the powers of democratically elected president cannot be taken away. The learned Senior Counsel further contended that the fourth respondent/vice-president has not been co-operating for carrying out the panchayat welfare schemes and the regular works of the Panchayat, and therefore, the order of the first respondent, dated 04.05.2012, taking away powers of the fourth respondent is correct as the activities of the panchayat cannot be left to be paralysed.

5. The learned Senior Counsel further contended that just because the fourth respondent had approached this Court and obtained an order of interim stay, the first respondent cannot invoke the emergency powers to do away with the rights of the democratically elected person. The learned Senior Counsel further contended that after the completion of the emergency works, the first respondent ought to have restored the authority of the petitioner. The learned Senior Counsel, in support of his above contentions, also placed reliance upon the Judgment of this Court in Logeswari Vs. The District Collector, The Assistant Director (Panchayat) and The Block Development Officer (Village Panchayat), . The learned Senior Counsel further submitted that in view of the fact that the orders have been passed by the authority concerned, on 30.05.2012, W.P.(MD). No. 2198 of 2012 has become infructuous.

6. Per contra, the learned Additional Government Pleader appearing for the respondents 1 and 2 would contend that the order passed by the first respondent is based on the emergent situation and for the welfare of the public. Further, the learned Additional Government Pleader contended that no welfare schemes could be implemented, because of the internal dispute between the president and the vice-president. Therefore, with no other alternative, the first respondent passed the

orders, which have been challenged in W.P(MD). Nos. 7637 of 2012 and 15564 of 2013.

7. The learned Additional Government Pleader also submitted that the Judgment relied upon by the learned Senior Counsel for the petitioner/president would not be applicable to the present facts and circumstances of the case. The learned Additional Government Pleader further contended that even though an emergency has ceased to exist, in view of the continuous dispute between the petitioner/president and the fourth respondent/vice-president, the regular functions of the panchayat are paralysed, and therefore, sought the dismissal of the Writ Petitions.

8. The learned counsel appearing for the fourth respondent/vice-president assailed the impugned order, which is challenged in W.P.(MD). No. 7637 of 2012, contending that since the president has undeserving members of the public as beneficiaries of his choice, the vice-president had refused to sign the cheques for disbursement of money for the welfare schemes in order to prevent the misuse of the funds and other than the same, there is no other reason for the vice president to refuse to sign the cheques. The learned counsel further contended that the normal activities are not paralyzed and the first respondent has no power to permanently take away the rights of a democratically elected person under section 203 of the Act, and therefore, pleaded for setting aside the order impugned in W.P.(MD). No. 7637 of 2012. The learned counsel further contended that the order, dated 04.05.2012, has been passed by the first respondent without giving any opportunity to the fourth respondent/vice president. The learned counsel placed reliance upon the Judgment reported in 2005-I-LW 549 and prayed that the impugned order in W.P.(MD). No. 7637 of 2012 may be set aside.

9. I have considered the above submissions and perused the records carefully.

10. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, since orders have been passed on the representation of the petitioner/president by the authority concerned, on 30.05.2012, W.P.(MD). No. 2198 of 2012 has become infructuous. Hence, W.P(MD. No. 2198/2012 is hereby dismissed as infructuous. No costs.

11. In W.P.(MD). No. 7637 of 2012, the vice-president has challenged the order passed by the first respondent taking away the powers of the Vice-president to sign the cheques for three months.

12. In W.P.(MD). No. 1564 of 2013, the president has challenged the order passed by the first respondent taking away the powers of the president to sign the cheques and vested the same with the third respondent.

13. In both these Writ Petitions, one of the grounds raised by the petitioners are that no opportunity was given by the first respondent calling for the objections of

the respective petitioners before passing the impugned orders.

14. The First Bench of the Principal Seat of this Court in Pugazhendran President, Brammapuram Village Panchayat, Katpadi Panchayat Union Vs. B.G. Balu, The District Collector, (Inspector of Panchayats) and The Government of Tamil Nadu, considered the importance of issuing notice and held that before taking any action against the Vice - President of Village Panchayat either under Section 203 or under Section 206 of the Act, person concerned should be given a notice, as any adverse order passed either under Section 203 or under Section 206 of the Act will have a civil consequence divesting the statutory powers and held in Paragraph Nos.29 to 31 as follows:-

"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 07.11.2002 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.

31. The District Collector, Vellore should have given a show cause notice and an opportunity of hearing to the Vice President (which need not have been a personal hearing as already stated above), and after considering the explanation and other materials submitted by the Vice President, he should have applied his mind independently and in a fair and impartial manner, and should have recorded his own reasons in the order he passed. Since that does not appear to have been done in the order of the District Collector, Vellore dated 07.11.2002, in our opinion, the said order was rightly quashed. The matter is remanded to the District Collector, Vellore to pass a fresh order after giving an opportunity of hearing to the Vice President and President of the Panchayat, and others concerned, and after recording his reasons. This should be done very expeditiously by the District Collector, Vellore".

The First Bench, while dealing with similar situation, has held that the non-co-operating party can be treated as "absent" and the cheque can be signed by

the remaining party with another member, as per the Government Order, issued in G.O.Ms. No. 92, Rural Development Department, dated 26.03.1997.

15. Upon perusal of the impugned orders in both the Writ Petitions, it is clear that the orders taking away the authority of the president and vice-president to sign the cheques have been passed by the first respondent, without affording opportunity to the petitioners. Therefore, the impugned orders are unsustainable.

16. At this juncture, it would be worthwhile to refer to Section 86 of the Act, which reads as under:

"86. Emergency powers of Executive Authority and Commissioner.-

The Executive Authority or the Commissioner may in cases of emergency direct the execution of any work or the doing of any act which requires the sanction of the Village Panchayat or the Panchayat Union Council, as the case may be, and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public, and may direct that the expenses of executing such work or doing such act shall be paid from the Village Panchayat Fund or the Panchayat Union Fund, as the case may be:

Provided that-

(a) he shall not act under this section in contravention of any order of the Village Panchayat or the Panchayat Union Council prohibiting the execution of any particular work or the doing of any particular act; and

(b) he shall report the action taken under this section and the reasons therefor to the Village Panchayat or the Panchayat Union Council at its next meeting."

17. Sections 203 and 204 of the Act reads as thus:

"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."

"204. 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 107 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 authorized 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."

18. This Court in Logeswari Vs. The District Collector, The Assistant Director (Panchayat) and The Block Development Officer (Village Panchayat), has held as under:

16. Section 37 of the Tamil Nadu District Municipalities Act, 1920 is a pari materia provision. This provision gives emergency powers to the District Collector. The provision reads thus:-

"(1) The District Collector, may, in case of emergency, direct or provide for the execution of any work, or the doing of any act which the council or [executive authority] is empowered to execute or to do, and the immediate execution or the 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 incurred as the emergency may require shall be paid from the municipal fund;

(2) If the expense is not so paid, such Collector may make an order directing the person having the custody of the municipal fund to pay it in priority to any other

charge against the fund.

(3) Such person shall, so far as the funds to the credit of the municipal council admit, be bound to comply with such order.

(4) Every case in which the powers conferred by this section are exercised shall be forthwith reported to the [State Government] by the District Collector with the reasons in full for the exercise of such powers; and a copy of the letter shall, at the same time, be sent to the municipal council for information."

17. The powers conferred upon the Collector under Section 203 is not intended to act as an authority to take disciplinary proceedings against the President or Vice President. The Government wanted the activities of the Panchayats to be taken up emergently, without obtaining formal orders from the Panchayat or executive authority. In case the Collector is of the view that the execution of a particular work is imminent or the doing of a particular thing is necessary for the safety of the public, it is open to him to take up such works without the association of the panchayat or executive authority. A careful reading of Section 203, in the light of Section 86 of the Act, would make the position very clear that the power is intended to exercise only in emergency.

18. In case emergent action is necessary, and it is not practically possible to obtain the sanction of the village panchayat or the panchayat union council, it is open to the executive authority or the Commissioner to execute such work and to pay the expenses of executing such work out of the village panchayat fund or the panchayat union fund, as the case may be. The emergency power conferred on the executive authority or the Commissioner under Section 86 of the Panchayat Act is also given to the Inspector of Panchayats under Section 203 of the Act.

19. Section 37 of the Tamil Nadu District Municipalities Act and Section 203 of the Tamil Nadu Panchayat Act deals with emergency powers conferred on the District Collector to take emergent action in certain urgent situations. Such powers should be treated only as extraordinary powers. Powers of this nature cannot be exercised in a routine manner to deny the legally elected members of the Panchayat from exercising statutory powers conferred on them by the Tamil Nadu Panchayat Act, 1924 and the related orders issued by the Government.

20. The District Collector cannot act as an extra constitutional authority over democratically elected President and Vice President of the Panchayat. In case the elected President or Vice President indulges in acts of misuse of authority and the cheque signing power should be taken away, it is for the legislature to incorporate appropriate provisions to confer such express powers of suspension on the District Collector.

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.

22. The Inspector of Panchayats is given power under Section 205 of the Act to remove the President from office. Similar powers are given under Section 206 of the Act for the purpose of removal of Vice President. Sub-Section (b) of Section 205(1) of the Act gives authority to the Inspector of Panchayats to take action against the President of Panchayat, in case it is made out that the President abused the power vested in him. In case it is made out that the President abused the cheque signing power, and misappropriated the public funds, the same can be a valid reason to initiate action for removal under Section 205 of the Act.

23. The President is an elected representative of the people of the village. The Constitution and the Panchayat Act wanted to give financial powers to the local body and it was only for the said purpose, the legislature has vested the executive authority on the Panchayat. The Legislature has given the cheque signing power to the President and Vice President. The cheques have to 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 another member authorized by the village panchayat. Such a power cannot be taken away by the District Collector lightly by invoking the emergency powers.

#### THE LEGAL PRINCIPLES:

24. The importance of Panchayat Raj Institutions in the light of Constitution (Seventy-third Amendment) Act, 1992 was indicated by the Supreme Court in Village Panchayat, Calangute Vs. The Additional Director of Panchayat-II and Others,. The Supreme Court observed:

"22. An analysis of Article 40 and Articles 243 to 243-0 shows that the Framers of the Constitution had envisaged the village panchayat to be the foundation of the country's political democracy-a decentralised form of government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment) Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayat Raj system evolved after Independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the

people at the grass root through the institution of panchayats at different levels.

23. For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring upon the panchayat the status of a constitutional body. Parliament has ensured that the panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the panchayats have been empowered to formulate and implement their own programs of economic development and social justice in tune with their status as the third tier of the Government which is mandated to represent the interests of the people living within its jurisdiction. The system of panchayats envisaged in this part aims at establishing strong and accountable systems of governance that will in turn ensure more equitable distribution of resources in a manner beneficial to all."

#### 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.

26. Therefore, I am of the view that the first respondent was not justified in invoking the jurisdiction under Section 203 of the Act to divest the President of her cheque signing power.

#### DISPOSITION:

27. In the result, the order dated 23 March, 2012 is set aside. The Writ Petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs."

19. This Court, in the Judgment referred to above, after analyzing the relevant provisions, had held that the powers of the president and the vice-president to sign the cheques cannot be taken away permanently and such powers can be exercised by the Inspector under emergent circumstances.

20. In the present case, the allegation of the vice-president is that the beneficiaries chosen by the president are undeserving and do not fall within the purview of the scheme. Now, after the impugned order, dated 04.07.2012, the welfare schemes have been implemented. Further, just because there is misunderstanding between the president and the vice-president, the powers cannot be taken away permanently. Insofar as the impugned order, dated 04.05.2012, is concerned, the president was exempted from getting the signature of the vice-president only for three months. Subsequently, the first respondent ought to have reviewed both the orders but has failed to do so.

21. There are allegations as well as counter allegations by the president and vice-president. In view of the dispute between the president and the vice-president, the routine functions of the panchayat should not be hampered. It is also important to lay down here that the president and the vice-president, who are elected by the public only to serve them, must set aside all their personal and political adversaries and ideologies and work for the betterment of the panchayat and the public. In case of mismanagement, the powers under section 205 and 206 of the Act can also be invoked. It is also not in dispute that the exigencies that existed when the impugned orders were passed are no longer present. The powers of the elected members cannot be permanently taken away by the first respondent acting as the Inspector of panchayat.

22. Hence, the impugned orders, for the reasons stated above, are hereby set aside. In case any party is refusing to sign the cheques without any valid reasons, the first respondent shall accord his approval for the panchayat to pass an appropriate resolution to permit any ward member to sign the cheque along with the unerring party. The first respondent is directed to conduct an enquiry by giving an opportunity to both the parties before passing any orders in the interest of the panchayat, considering the provisions of the Act and the Government Order, issued in G.O.Ms. No. 92, Rural Development Department, dated 26.03.1997. The Writ Petitions are allowed, as indicated above No costs. Consequently, connected Miscellaneous Petitions are closed.