(2009) 12 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 1847 of 2008

R. Ravi — APPELLANT

Vs

The District Collector, (Inspector of Panchayats), The Block Development Officer Harur Panchayat Union and Ms. Chennamal — RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:
Tamil Nadu Panchayats Act, 1994 — Section 188(2), 188(3), 199, 200, 201

Citation : (2010) WritLR 489

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V. Suthakar, for the Appellant; R. Murali, Government Advocate for 1st Respondent and T. Seenivasan, Additional Government Pleader for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is directed against the order of the first respondent, who is the Inspector of Panchayat, dated

25.4.2007, by which the first respondent has divested the petitioner, being the Vice President of the Panchayat, of his cheque signing power and

granted the same to the First Ward Member, J. Jayashankar to sign along with the president and also for a consequential direction to permit the

petitioner to sign the cheques along with the third respondent/President in accordance with Section 188(3) of the Tamil Nadu Panchayats Act,

1994 (for brevity, ""the Act"").

2. The petitioner was elected as a Ward Member of Veerapanayaganpatti Village Panchayat in the election conducted on 25.10.2006. The said

Panchayat consists of a President, Vice President and eight Ward Members. The petitioner was elected as Vice President. The third respondent is

the President of the Panchayat and as per Section 188(3) of the Act, the third respondent and the petitioner are jointly entitled to operate the

village panchayat funds and according to the petitioner, he has cooperated with the third respondent in operating the funds.

3. It is stated that during the year 2007, in respect of the purchase of spare parts for hand pumps and for maintenance of street lights, there was

some dispute between the petitioner and the third respondent and therefore, the petitioner was unable to sign cheques jointly with the third

respondent. The third respondent has nominated one J. Jayashankar as third member to operate the village panchayat fund and sign the cheques

along with the third respondent by way of a resolution dated 12.1.2007.

4. Since the first respondent, being the Inspector of Panchayats, has proceeded to approve the resolution dated 12.1.2007, the petitioner filed

W.P. No. 3779 of 2007, which was disposed of on 3.2.2007 by directing the first respondent to give opportunity to the petitioner to put forth his

case before deciding the question of granting approval to the resolution. Pursuant to the said direction of this Court, it is stated that the first

respondent has conducted enquiry on 16.4.2007, in which the third respondent as well as the petitioner and other members of the panchayat have

given statements. Thereafter, on 25.4.2007, the first respondent has passed the impugned order permitting the said J. Jayashankar as a joint

signatory to the cheques along with the third respondent.

5. The said order of the first respondent is challenged by the petitioner on various grounds, viz., that the first respondent has not taken into

consideration the reason assigned by the petitioner for not signing the cheques along with the third respondents; that the petitioner has made a

representation on 24.12.2007 to cancel the resolution dated 12.1.2007 and till date the first respondent has not passed any orders on the

representation; that u/s 188(3) of the Act and as per the guidelines issued by the Government, the first respondent while passing order has to apply

his mind and give reasons and therefore, by relying upon the judgment of the Division Bench 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, , the petitioner challenges the said impugned order on the ground that the same is in violation of the procedure

contemplated under the Act.

6. In the counter affidavit filed by the first respondent, it is the case of the first respondent that the petitioner, being the Vice President of the

Panchayat, is a resident of Krishnagiri and has not attended any Village Panchayat Council meeting from 6.4.2007 till date and therefore, the

petitioner has failed to cooperate with the third respondent as per statement submitted by all the members of the Village Panchayat in the personal

enquiry conducted by the first respondent on 25.4.2007. It is stated that it was in those circumstances, as per the guidelines issued by the

Government in G.O. No. 92, Rural Development (C-III) Department, dated 26.3.1997, the cheque signing power has been given to

J.Jayashankar as per the nomination of the third respondent in accordance with the resolution and it is stated that the said order is in accordance

with the guidelines issued by the Government.

7. Mr. V. Suthakar, learned Counsel appearing for the petitioner would bring to the notice of this Court about some subsequent developments. It

is seen that the first respondent has initiated action against the third respondent/ President u/s 205 of the Act for her removal based on certain

complaints of financial irregularities and therefore, it is the submission of the learned Counsel for the petitioner that the first respondent should be

directed to take a fresh stand on that. It is his further submission that as per Section 188(3) of the Act, the first respondent should have given

reasons for divesting the petitioner of his cheque signing power.

8. On the other hand, it is the contention of the learned Counsel for the respondents that it was as per the resolution of the panchayat only a

decision was taken by the third respondent to induct the said J.Jayashankar for jointly signing the cheques since the petitioner has absented himself

and therefore, the order is well within the powers and as per the procedure contemplated under the provisions of the Act.

9. The fact that the petitioner was elected as the Vice President of the Panchayat and that after that he has been jointly signing the cheques with the

third respondent is not in dispute.

10. Section 188 of the Act which relates to Village Panchayat Fund, which

includes various categories like house tax, profession tax, etc., as

enumerated u/s 188(1), in Sub-section (3) empowers the Vice President to jointly sign with the President all cheques for payment from the Village

Panchayat Fund or other funds constituted under Sub-section (2). Sub-section (2) enables the Government to issue directions to the Village

Panchayat to constitute separate funds. Sections 188(2) and 188(3) of the Act are as follows:

Section: 188. Village Panchayat Fund.-

(1) ***

(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

or other funds constituted under Sub-section (2) 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.

11. It is in accordance with Section 188(2) of the Act, the Government has passed G.O. No. 92, Rural Development (C-III) Department, dated

26.3.1997 regarding rationalisation of village panchayat accounts based on the report of a Committee constituted. The purpose of the said

Government Order is to ensure greater transparency and better monitoring of village panchayat transactions and the new system of accounts has

come into force from 1.4.1997.

12. It is seen that a resolution was passed by the Panchayat on 12.1.2007 and out of 10 members, including the President, eight have participated.

It was in that meeting of the panchayat, the resolution was passed divesting the petitioner of his cheque signing power and permitting the Ward

Member, J. Jayashankar to sign cheques along with the third respondent/ President in the place of the petitioner, since the petitioner is stated to

have not cooperated.

13. It is also seen that the petitioner has made a complaint to the first respondent on 22.1.2007 making certain allegations against the third

respondent, who has acted in collusion with a Revenue Assistant, P. Jai Shankar.

14. When the petitioner has earlier approached this Court by filing W.P. No. 3779 of 2007 to forbear the first respondent/District Collector from

approving the resolution of the village panchayat dated 12.1.2007, the writ petition was disposed by order dated 3.2.2007 with the following

direction:

4. The Division Bench of this Court has held 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, , that the District Collector (Inspector of Panchayats)

is duty bound to give a hearing to the Vice President before deciding whether the Vice President was refusing to sign any cheque. In the light of the

above ratio laid down by the Division Bench of this Court, it is needless to point out that the first respondent shall give an opportunity to the

petitioner before granting approval to the resolution passed by the Panchayat on 12.1.2007.

5. Under such circumstances, this writ petition is disposed of directing the first respondent to give an opportunity to the petitioner before deciding

the question of granting approval to the resolution of the panchayat dated 12.1.2007, No costs. Consequently, connected MP is closed.

15. It was thereafter, admittedly, the first respondent has conducted an enquiry and he has given opportunity to the petitioner as well as the third

respondent and other members. Pursuant to the said enquiry, the first respondent has passed the impugned order by relying upon the resolution of

the Panchayat dated 12.1.2007 and the statements stated to have been given by various persons, including the petitioner and due to the reason that

during summer season certain activities are to be done, has passed the order directing the first Ward Member, J. Jayashankar to jointly sign the

cheques along with the third respondent.

16. While considering the said Section 188(3) of the Act, a Division Bench 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, has held that before granting approval the Inspector of Panchayats should give a hearing to the President or Vice President and pass orders by giving

reasons. The Division Bench has held as follows:

27. We would however point out that before granting prior approval it would be the duty of the Inspector of Panchayats (District Collector) to

give a hearing to the Vice President or (President, as the case may be) (which need not be a personal hearing as already mentioned above), and

apply his mind and decide by a written order giving reasons as to whether in his opinion, the Vice President (or President, as the case may be) is

refusing to sign the cheque for ulterior motive, or for genuine reasons in the interest of the village panchayat. It will be the duty of the Inspector of

Panchayats, to decide this matter objectively and impartially without being influenced by any extraneous pressures or considerations. If the refusal

to sign the cheque is for good and genuine reasons in the interest of the Village Panchayat, the Inspector should refuse approval, but if it is for

extraneous considerations or is mala fide he should grant it.

17. That was also followed in R. Thalaiman v. Inspector of Panchayats-cum-District Collector, Karur District, Karur and Ors. [2009] 5 MLJ 555

holding that while divesting the President or Vice President of his powers of signing the cheques u/s 188(3) of the Act, the procedure as

contemplated u/s 206 of the Act has to be followed. In the said decision, it was held as follows:

16. When there is a provision to remove the Vice President on account of his refusal to carry out any of the functions of the Vice President or due

to disobeying the provisions of the Panchayat Act or on allegation of abuse of his powers as the Vice President, with notice to him, the said

procedure has to be substantially complied with, while divesting the Vice President of his powers to sign the cheque as conferred on him u/s

188(3) of the Act.

17. The power of the Vice President to sign the cheque is a statutory power conferred on him u/s 188(3) of the Act. Such a power cannot be

taken away by way of an executive act. Therefore, while taking action to divest the Vice President of his powers to sign the cheque, the procedure

as contemplated u/s 206 of the Act, has to be complied with. The order divesting the Vice President of his powers to sign the cheque jointly with the President involves civil consequence to him and his administrative powers would be taken away on account of such orders.

18. Even though the Panchayat was within its powers to authorise any other member other than the Vice President to operate the account jointly

with the President, when there was adversarial relationship between the President and the Vice President, the prior approval of the Inspector of

Panchayat was mandatory. The idea behind granting such power to the panchayat to tide other the difficulty caused on account of the strained

relationship between the President and the Vice President and for a smooth administration of the panchayat. The Collector, being the Inspector of

Panchayat, was given the powers to consider the resolution passed by the panchayat in the matter of divesting the cheque signing powers of the

Vice President and entrusting such powers to a member of panchayat. Therefore, the District Collector has got a say in the matter. The grant of

prior approval is not an empty formality.

18. On the facts and circumstances of the present case, it is not in dispute that the first respondent has given personal hearing to the petitioner as

well as the third respondent and other members of the panchayat before passing the impugned order. A reference to the impugned order, which is

as follows, also shows that the first respondent has not only given opportunity to the petitioner and others, but also applied his mind and due to

reason that during summer season certain actions are to be done, as an urgent measure, he has passed the impugned order:

VERNACULAR (TAMIL) PORTION OMITTED

19. I am of the considered view that there is nothing to interfere with this order, since the procedure contemplated and principles of natural justice

have been followed. But, as brought to the notice of this Court by the learned Counsel for the petitioner, the first respondent himself has

considered certain complaints against the third respondent/President, who is stated to have committed some misappropriation of funds and in fact,

the charges appear to be, as it is seen in the order of the first respondent dated 16.2.2009, that the third respondent has issued cheques in the

names of her relatives numbering (8) and the accounts have been written in the name of a Revenue Assistant, P. Jai Shankar to the tune of Rs.

34,200/- and therefore, the first respondent has notified that action u/s 205 of the Act for removal of the President is being taken. The contents of

the said proceedings of the first respondent in Na. Ka. No. 1250/2008/A1, dated 16.2.2009, which are as follows, shows that certain charges of

misappropriation are levelled against the third respondent:

VERNACULAR (TAMIL) PORTION OMITTED

20. The Inspectors of Panchayats appointed by the Government have wide powers of inspection u/s 200 of the Act and have control over the

affairs of the panchayat u/s 201 of the Act. Sections 200 and 201 of the Act are as follows:

Section: 200. Powers of Inspecting Officers.-

(1) The Inspector or the Collector or any officer appointed u/s 199 or any other officer or person whom the Government or the Inspector or the

Collector may empower in this behalf, may-

(a) enter on and inspect any immovable property, or any work in progress, under the control of any Panchayat or any Executive Authority or

Commissioner, or Secretary;

(b) enter any school, dispensary, vaccination station or choultry maintained by or under the control of any Panchayat or any other institution

maintained by or under the control of any Panchayat and inspect any records, registers or other documents kept in any such institution;

(c) enter the office of any Panchayat and inspect any records, registers or other documents kept therein.

(2) Village Panchayats and their Presidents, Executive Authorities, Panchayat Union Councils, and their Chairmen, Commissioners, District

Panchayats and their Chairmen, Secretaries and the officers and servants of Panchayats shall be bound to afford to the officers and persons

aforesaid, such access, at all reasonable times, to Panchayat property or premises and to all documents as may, in the opinion of such officers or

persons, subject to such rules as may be prescribed, be necessary to enable them to discharge their duties under this section.

Section: 201. Powers of officers for purpose of control.- The Inspector or any officer or person whom the Government or the Inspector, may

empower in this behalf may-

(a) direct the Village Panchayat or Panchayat Union Council or the District

Panchayat to make provision for and to execute or provide any public

work or amenity, or service of the description referred to in Section 110, 112 and 163;

(b) call for any record, register or other document in the possession, or under the control of any Panchayat or Executive Authority, or

Commissioner or Secretary;

(c) require any Panchayat or Executive Authority or Commissioner or the Secretary to furnish any return, plan, estimate, statement, account or

statistics;

(d) require any Panchayat or Executive Authority or Commissioner or the Secretary to furnish any information or report on any matter connected

with such Panchayat;

(e) require any Panchayat or Executive Authority or the Commissioner or the Secretary to obtain his previous sanction before giving up a claim or

closing down any institution which is a source of income;

(f) record in writing for the consideration of any Panchayat or Executive Authority or Commissioner or the Secretary, any observations in regard to

its or his proceedings or duties.

21. In addition to that the Inspector has emergency powers u/s 203 of the Act, which is as under:

Section: 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.

22. In the present factual scenario, when it is clear that even against the third respondent/President charges are levelled, it is the duty of the first

respondent to take appropriate steps for protecting the interest of the panchayat, including the funds by effecting proper inspection and pass

appropriate fresh orders u/s 188(3) of the Act in the changed circumstances.

In such view of the matter, the writ petition is dismissed, however with a direction to the first respondent to take appropriate decision regarding the

cheque signing powers u/s 188(3) of the Act by following the due process of law and giving notice to all the persons concerned and pass orders

expeditiously, in any event within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P. No. 2

of 2008 is closed.