
(2015) 11 MAD CK 0097

In the Madras High Court

Case No : Writ Petition (MD) No. 829 of 2015 and M.P. (MD) No. 2 of 2015

T.T.C. Cheran

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Constitution of India, 1950 — Article 243-I

Tamil Nadu Panchayats Act, 1994 — Section 185, 185(a), 185(b), 186, 187

Citation : (2016) 1 LW 481 : (2016) 1 MLJ 385

Hon'ble Judges : V. Ramasubramanian and N. Kirubakaran, JJ.

Bench : Division Bench

Advocate : V. Selvaraj for N. Dilipkumar, for the Appellant; B. Pugalendhi, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioner, who was formerly the president of a village panchayat and who was also a member of the District Panchayat, has come up with the above writ petition, by way of public interest litigation, challenging an order dated 18.11.2014, issued by the District Collector, Tiruchirappalli, and seeking a consequential mandamus to direct the Director of Rural Development to transfer the entire seigniorage fee to Account No. 1 of respective village panchayats within his control.

2. We have heard Mr. V. Selvaraj, learned counsel appearing for the petitioner, Mr. B. Pugalendhi, learned Special Government Pleader, appearing for the respondents 1 to 4 and Mr. C. Vakeeswaran, learned counsel for the 5th respondent.

3. By the order impugned in the writ petition, dated 18.11.2014, the District Collector of Tiruchirappalli, has directed 75% of the seigniorage fee of about Rs. 14,54,36,112/-, collected from sand and other mineral quarries, to be deposited into Village Panchayat Account No. 3, in proportion to the area of the quarry located in each of the panchayats. This order has been purportedly based upon

the proceedings of the Director of Rural Development, dated 30.09.2013. This direction is also confined only to the Financial Years 2011-2012 and 2012-2013.

4. The grievance of the writ petitioner is that the seigniorage fee, which belongs to the respective village panchayats by virtue of Section 188(1)(q) of the Tamil Nadu Panchayats Act, 1994 (in short "the Act") should be credited into the Village Panchayat Account No. 1, instead of being credited into Account No. 3.

5. What makes Account No. 1 distinct and different from Account No. 3 is just the mode of operation. Insofar as the monies deposited into Village Panchayat Account No. 1 is concerned, the account can be jointly operated by the president and vice-president. There is no interference from anyone. But, insofar as the Village Panchayat Account No. 3 is concerned, it is actually called "Village Panchayat Centrally Sponsored Schemes Fund Account" and the mode of operation is little complicated. Account No. 3 can be operated by the president and vice-president. However, the District Collector should instruct the concerned Bank Branches, in writing, to make suitable ledger/computer entries to honour the cheques signed by the president and vice-president, only if they are accompanied by the release orders in the form of proceedings by the Block Development Officers (Village Panchayats), for the payment of works from the Village Panchayat Scheme Funds concerned. Even the cheque leaves should be stamped with "To be paid only if accompanied by proceedings of the Block Development Officers (Village Panchayats)". No cheques or drawals, based upon the withdrawal form, are to be permitted from Account No. 3. It is this essential difference between the mode of operation of Account No. 1 and the mode of operation of Account No. 3 that has triggered the present public interest litigation.

6. Before considering the contentions, it would be worthwhile to take note of the brief history.

"(a) After the enactment of the Tamil Nadu Panchayats Act, 1994, the Government set-up a Committee to revise the accounting procedures of panchayats and panchayat unions. The Committee submitted a Report titled "Rationalisation of Village Panchayat Accounts". The Government accepted the Report and issued G.O. Ms. No. 92, Rural Development (C.III) Department, dated 26.03.1997. Under Annexure to the said Government Order, every village panchayat was directed to have three Bank Accounts, namely (1) Village Panchayat Fund Account; (2) Village Panchayat Earmarked Grants Account; and (3) Village Panchayat Scheme Fund Account.

(b) The Annexure to G.O. Ms. No. 92 also contained the items of receipts that will go into the Village Panchayat Fund Account (Account No. 1). The items of receipts that should go into this Account No. 1 were taxes, fees, fines, miscellaneous revenue and assigned revenues. One of the items of the assigned revenues was "seigniorage fee" on minor minerals used in roads/buildings (other than granite).

(c) Insofar as the Scheme Fund Account (Account No. 3) is concerned, the

receipts from Centrally Sponsored Schemes were directed to go into the said Fund Account.

(d) The Government Order G.O. Ms. No. 92, dated 26.03.1997, was also given a statutory status with the Government issuing a Notification in G.O. Ms. No. 233, Rural Development (C-III) Department, dated 17.07.1997, issued in exercise of the powers conferred by Section 188(2) of the Act.

(e) But, within a year of the issue of the aforesaid Notification, creating three different fund accounts for all village panchayats, the Government created two more accounts, one for the deposits for water connections and another for National Rural Employment Guarantee Schemes (NREGS). This was done under G.O. Ms. No. 260, Rural Development Department, dated 09.12.1998.

(f) However, after 10 years of experience, the Government identified the weaknesses in the existing system and hence it came up with a revised procedure for operation of village panchayat accounts, under G.O. Ms. No. 146, Rural Development and Panchayat Raj (C4) Department, dated 17.08.2007.

(g) Under this Government Order, the Government directed the creation of three accounts, namely (i) Village Panchayat Fund Account; (ii) Village Panchayat Payments to TNEB and/Or TWAD Board Account; and (iii) Village Panchayat Scheme Fund Account. However, in respect of Village Panchayats where National Rural Employment Guarantee Scheme was implemented, a fourth Account in respect of the same was also directed to be opened.

(h) Under the said G.O. Ms. No. 146, dated 17.08.2007, it was mandated that the revenue from all the components, as mentioned in Section 188(1) of the Act was directed to be credited to the Village Panchayat Fund Account. Since under Clause (q) of sub-section (1) of Section 188, seigniorage fee is one of those items, the same was automatically to go to the Village panchayat Fund Account, by virtue of the said Government Order G.O. Ms. No. 146.

(i) It is relevant to note that even under this Government Order, Village Panchayat Fund Account (Account No. 1) was to be jointly operated by the president and vice-president of the village panchayat. However, the Village Panchayat Schemes Fund Account (Account No. 3) as well as the Village Panchayat NREGS Account (wherever applicable) are to be operated only if the cheques signed by the president and vice-president were accompanied by release orders issued by the Block Development Officers (Village Panchayats).

(j) At this juncture, it is also relevant to take note of a set of Rules, known as the Tamil Nadu Village Panchayats (Receipts and Expenditure and Maintenance of the Accounts of Village Panchayats) Rules, 2000, issued in exercise of the powers conferred by Sections 90, 191(1) and 242(1) of the Act. Under Rule 21 of these Rules, the village panchayat is entitled to receive a sum equivalent to the seigniorage fees collected by the Government every year from persons permitted to quarry minor minerals in the village panchayat. This Rule is in tune with

Section 188(1)(q) of the Act.

(k) Rule 31 of the Rules stipulates that all payments out of the Village Panchayat Fund against bills presented to the village panchayat shall be made only after the bills are passed by the Executive Authority or by the person authorised by the Government in respect of any particular Scheme or Fund. Therefore, there was always a check on the manner in which the expenditure was sanctioned, especially when it was in relation to the Scheme Funds.

(l) While things stood thus, the Government constituted the Fourth State Finance Commission, under G.O. Ms. No. 549, Finance (Finance Commission) Department, dated 01.12.2009, for the purpose of studying the financial position of village panchayats and other local bodies. The Fourth State Finance Commission was constituted in terms of Article 243-I of the Constitution read with Section 198 of the Tamil Nadu Panchayats Act, 1994. This Finance Commission presented a final report, approved in a meeting held on 24.09.2011. In paragraph 64 of its Report, the Commission recommended that 75% of the revenue from seigniorage fee due to a particular village panchayat having quarries has to be passed on to the respective village panchayat and the balance 25% to be pooled by the District Collector and shared with village panchayats identified as having to bear the brunt of the mining/quarrying activities. This recommendation of the Fourth State Finance Commission was accepted by the Government, as seen from the Report signed by the Minister - Finance.

(m) Thereafter, the Government issued G.O. Ms. No. 194, Finance (FC-IV) Department, dated 10.06.2013, containing suitable directions for the implementation of the recommendations of the Fourth State Finance Commission. As per those orders, the recommendations of the Fourth State Finance Commission for the release of 75% of the seigniorage fee for the concerned village panchayats was to be implemented for the year 2013-2014. It is in pursuance of the said Government Order and the instructions issued by the Director of Rural Developments that the Collector of Tiruchirappalli District, who is the 3rd respondent herein, issued the impugned order, dated 18.11.2014, directing the transfer of 75% of the seigniorage fee, collected in relation to the period from 01.04.2011 to 31.03.2012 and from 01.04.2012 to 31.03.2013, to be transferred to Account No. 3. Aggrieved by the said order, the petitioner has come up with the above public interest litigation."

7. The impugned order of the District Collector, Tiruchirappalli, directing the transfer of 75% of the seigniorage fee collected from the quarries to Account No. 3 of the respective Village Panchayats is challenged by the petitioner broadly on the following grounds:

"(i) that the impugned order is contrary to statutory prescription;

(ii) that the impugned order is contrary to the Rules;

(iii) that the impugned order is contrary to the instructions issued by the

Government under G.O. Ms. No. 146, Rural Development and Panchayat Raj (C4) Department, dated 17.08.2007; and

(iv) that the impugned order strikes at the root of the autonomy given to Panchayats as Units of Self-Government."

8. We have carefully considered the above submissions.

9. The first submission is based upon Section 188(1)(q) of the Act. Section 188(1)(q) reads as follows:

"188. Village Panchayat Fund.--(1)The Receipts which shall be credited to the village panchayat fund shall include--

.....

(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;

..... "

10. But, unfortunately, the expression "village panchayat fund" appearing in Section 188(1) need not necessarily mean Account No. 1. As a matter of fact, the Tamil Nadu Panchayats Act, 1994 speaks only of two types of funds for a Panchayat Union and only one type of fund for a Village Panchayat. This is under Section 185. Under Section 185(a) there shall be constituted a Panchayat Union (General) Fund and a Panchayat Union (Education) Fund for each Panchayat Union. Under Clause (b) of Section 185, there shall be constituted a Village Panchayat Fund for each Village Panchayat.

11. Sections 186 to 189 deal respectively with (i) the receipts to be credited to the Panchayat Union (General) Fund; (ii) the receipts to be credited to the Panchayat Union (Education) Fund; (iii) the receipts to be credited to the Village Panchayat Fund; and (iv) the constitution of District Panchayat (General) Fund. Therefore, in essence, the statute merely gives a broad based approach for the constitution of a Village Panchayat Fund. The power to constitute a Village Panchayat Fund, that flows out of Section 185(b) is not restricted to the constitution of one single fund. This is made clear by sub-section (2) of Section 188, which reads as follows:

"(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."

12. Therefore, it is clear that what is contemplated by Section 185(b) is the constitution of a Village Panchayat Fund. But, it is not to be taken as the constitution of a single fund. This is made clear by the power conferred upon the Government under sub-section (2) of Section 188 to constitute separate funds.

The power under Section 188(2) is not merely to constitute separate funds but also to prescribe the amounts which should be credited to such funds and the manner of application of those funds.

13. Another interesting fact that should be taken note of is the prescription contained in sub-section (3) of Section 188 and an amendment made to the said sub-section under Tamil Nadu Panchayats (Sixth Amendment) Act, 2007 (Tamil Nadu Act 25 of 2007). Sub-section (3) of Section 188, before its amendment under Tamil Nadu Act 25 of 2007, read as follows:

"(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."

14. By Tamil Nadu Act 25 of 2007, the words "or other funds constituted under sub-section (2)" were omitted from sub-section (3). This amendment is of significance.

15. In other words, sub-section (3) made it mandatory before the 2007 amendment for the President and the Vice-President to sign all cheques for payment from the village panchayat fund as well as other funds constituted under sub-section (2). But, after the amendment, Sub-section (3) has no application to other funds, constituted under Sub-section (2).

16. If we understand the scope of Section 188(1)(q) in the context of the power conferred under sub-section (2) upon the Government to create separate funds and also in the context of the amendment made to sub-section (3) of Section 188, it will be clear that the impugned order cannot be taken to be violative of the statutory prescription. Moreover, sub-section (2) contains a non-obstante clause. Therefore, the power of the Government to constitute separate funds available under sub-section (2) is not restricted by sub-section (1). Similarly, sub-section (3) starts with the rider "subject to such general control". Therefore, the general cheque signing power of the President and the Vice-President is subject to such general control as the Village Panchayat may exercise from time to time.

17. Once it is clear that the Government has power to create separate funds, it follows as a corollary that the Government can decide the manner in which the funds are also to be expended. In fact, Section 191(1) makes it clear that the purpose to which the funds of the village panchayat may be applied shall include all objects as spelt out by any Rules issued under the Act and that the funds shall be applied subject to such Rules or subject to orders as the Government may prescribe or issue from time to time. In such circumstances, it is not possible to accept the first contention of the learned counsel for the petitioner.

18. The second contention of the petitioner revolves around the Rules. As we

have stated earlier, the Government had issued a set of Rules, known as "Tamil Nadu Village Panchayats (Receipts and Expenditure and Maintenance of Accounts of Village Panchayats) Rules, 2000". But, these Rules do not deal with the different types of Accounts that a Village Panchayat may operate. These Rules merely speak about the collection and remittance of taxes, collection of licence fee, income from endowments and trusts, contributions, sale proceeds of the properties as well as seigniorage fees.

19. But, an important aspect borne out by the Rules is that though the cheque signing power is conferred upon the President and the Vice-President, all payments are to be made only after the bills are passed by the Executive Authority or by any other person authorised by the Government in respect of any particular Scheme or Fund. Rule 31 makes it very clear and it reads as follows:

"31. Payments from village panchayat.--All payments out of the village panchayat fund against bills presented to the village panchayat shall be made only after the bills are passed by the executive authority or by any person authorised by Government in respect of any particular scheme or fund."

Therefore, the cheque signing power is not to be confused with the authorisation for making payment out of village panchayat fund.

20. Even Rule 37 of the Rules makes it clear that whenever any item of expenditure requires the sanction of any authority higher than the officer or servant drawing the bill, such sanction shall be obtained. Rule 38(1) also provides that no item of expenditure shall be sanctioned by a Village Panchayat, unless a certificate furnished by the Executive Authority in Form-II accompanied the same. Therefore, the Rules also contemplate certain checks and balances. Hence, the second contention is devoid of merits.

21. The third contention revolves around G.O. Ms. No. 146, Rural Development and Panchayat Raj (C4) Department, dated 17.08.2007. In paragraph 3 of the said Government Order, it is stipulated that the revenue from all the components as mentioned in Section 188(1) shall be credited to the Village Panchayat Fund Account. Therefore, the contention is that the seigniorage fee which is one of the components of revenue indicated in Section 188(1) should be credited only to Account No. 1.

22. But, we do not agree. The Government constituted the Fourth State Finance Commission, in terms of Article 243-I of the Constitution, read with Section 198 of the Tamil Nadu Panchayats Act, 1994. As per the Report of the Fourth State Finance Commission, 75% of the revenue from seigniorage fee had to be passed on to the respective village panchayats. The recommendations of the Fourth State Finance Commission have been accepted by the Government as seen from G.O. Ms. No. 194, Finance (FC-IV) Department, dated 10.06.2013. Merely because the Government indicated in the said Government Order that the recommendations of the Fourth State Finance Commission are to be implemented from the year 2013-2014, it does not mean that the direction to

credit seigniorage fee into Account No. 3 was illegal. In paragraph 4 of G.O. Ms. No. 194, dated 10.06.2013, it is indicated that the orders issued in paragraph 3 of the G.O. would take effect from 01.04.2012. Therefore, there is no use in contending that the impugned order is contrary to G.O. Ms. No. 146, Rural Development and Panchayat Raj (C4) Department, dated 17.08.2007, when much water has flown under the bridge.

23. The last contention is that the impugned order strikes at the root of the autonomy of the village panchayats, which are constituted as units of Self-Government. This argument cannot really be belittled as invalid. But, unfortunately, the manner in which the panchayats are found to be functioning raises serious questions as to whether any such autonomy exists at all and as to how such autonomy is used and misused. Some statistics provided in the counter affidavit filed by the District Collector, Tiruchirappalli, as to how the seigniorage fee credited to Account No. 1 was misused and misappropriated are so shocking, the impugned order cannot be found fault with. The relevant portion of the counter affidavit of the District Collector reads as under:

"It is also submitted that the Seigniorage Fee released to the following Village Panchayats" Fund Account No. 1 as detailed below have been misused and misappropriated by the concerned Village Panchayat Presidents whom against action had been taken under section 205 of Tamil Nadu Panchayat Act, 1994.

24. The statistics furnished above provide probably the reason as to why none of the Panchayat Presidents or Vice-Presidents have chosen to challenge the impugned order. If at all the autonomy of the Panchayat is infringed, the elected representatives and more particularly the President and the Vice-President bear the brunt of such infringement. They have themselves not chosen to challenge the credit of the seigniorage fees into Account No. 3 instead of into Account No. 1. Therefore, the last contention cannot also be accepted.

25. One more contention advanced by Mr. V. Selvaraj, learned counsel for the petitioner, is that the accounts relating to Village Panchayat Fund Account No. 1 are subject to Audit by the Grama Sabha. Section 3(1) of the Tamil Nadu Panchayats Act, 1994 contemplates the constitution of a Grama Sabha for every Village Panchayat. Under Sub-section (3)(a)(ii-a) of Section 3 of the Act, the Grama Sabha is entitled to approve the Audit Report on the village panchayat accounts of the previous year. The meeting of the Grama Sabha are to be convened by the President of the Village Panchayat. If he fails to convene, then the Inspector (the Collector) can convene the meeting.

26. The Government had also issued a set of Rules known as the Tamil Nadu Grama Sabha (Quorum and Procedure for Convening and Conducting of Meeting) Rules, 1998. The word "Grama Sabha" itself is defined in Section 2(13) to mean a body, consisting of persons registered in the elected rolls relating to a panchayat village. Therefore, the contention of the petitioner is that when a body is already contemplated for approving the Audit Report, it is not fair to credit the

seigniorage fees into Account No. 3.

27. But, we do not think that there is any conflict between the role to be played by the Grama Sabha under the Act and the role to be played by the Block Development Officer in certifying the payments made out of Account No. 3. Section 3(3) of the Act does not contemplate the Grama Sabha to be an authority competent to conduct audit. Section 3(3) merely contemplates the Grama Sabha as an entity to approve the Audit Report. This role is neither belittled by the transfer of the seigniorage fee to Account No. 3 nor the order infringes upon the power conferred upon the Grama Sabha under Section 3(3)(a) (ii-a). Hence, this contention cannot also be accepted.

28. It is important to note that the cheque signing powers of the President and the Vice President are not taken away by the impugned order. The determination of the account into which certain monies are to be deposited does not infringe upon the rights of the Village Panchayat so long as the cheque signing power is retained for the President and the Vice-President. If, by past experience, the third respondent considers that by crediting seigniorage fee into Account No. 3, a measure of checks and balances could be maintained, the same cannot be found fault with. Hence, we find no merits in the writ petition. Therefore, the writ petition is dismissed. No order as to costs. Connected miscellaneous petition is also dismissed.