

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice

and

The Honourable Mr.Justice D.MURUGESAN

W.A.No. 1799 of 2004
and
W.A.M.P.No. 3369 of 2004
and
W.A.M.P.No. 4830 of 2004

Pugazhendran
President,
Brammapuram Village Panchayat,
Katpadi Panchayat Union,
Katpadi Taluk,
Vellore District.

... Appellant

Vs.

1. B.G.Balu
S/o.Gopal,
Brammapuram Panchayat,
Katpadi Taluk,
Vellore District.

2. The District Collector,
(Inspector of Panchayats)
Vellore District,
Vellore.

3. The Government of Tamil Nadu
rep. by its Secretary to Government,
Rural Development Department,
Fort.St.George,
Chennai - 600 009.

... Respondents

(Third respondent impleaded as per
order dated 28.01.2005 in W.A.M.P.No.
232 of 2005 by Hon'ble CJ & DMJ)

Appeal filed under clause 15 of the Letters Patent against the order passed in W.P.No.1828 of 2004 dated 17.04.2004.

For appellant ... Mr.P.S.Raman,
Senior Counsel
For M/s.V.Suthukar &
K.S.Viswanathan

For Respondent 1 ... Mr.K.Muthukumarasamy

For Respondents
2 & 3 ... Mr.V.Raghupathy
Government Pleader

J U D G M E N T

THE HONOURABLE THE CHIEF JUSTICE

This writ appeal involves an important question of law, which has arisen in many cases, and hence we are giving this detailed judgment.

2. We have heard the learned counsel for the parties, and have perused the records, as well as the impugned judgment.

3. The controversy in this case is regarding the interpretation of Section 188 (3) of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as 'the Act'), which states:-

" Subject to such general control as the village panchayat may exercise from time to time, all cheques for payment from Village Panchyat 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 authorized by the village panchayat at a meeting in this behalf"

4. As can be seen from a perusal of Section 188(3) of the Act, all cheques for payment from the Village Panchayat Fund or other funds constituted under sub-section (2) have to be signed jointly by the President and Vice President, and in the absence of President or Vice-President, as the case may be, by the Vice-President or President and another member authorized by the village panchayat at a meeting in this behalf.

5. The question, which arises in this case, is that if the

president or vice president refuses to sign a cheque, whether it should be treated as 'absence' within the meaning of the word in Section 188(3) of the Act. A situation may arise where the president and vice-president of the village panchayat may be of different political parties or may be adversaries for other reasons, and one of them refuses to sign a cheque of the Village Panchayat Fund or other funds constituted under sub-section(2).

6. To deal with this situation, G.O.Ms.No. 92 dated 26.3.1997 has been issued by the Government of Tamil Nadu, in which it is stated:-

"All the accounts should be jointly operated by the President and the Vice President. In exceptional cases, when there is adversarial relationship between the President and the Vice President, the panchayat, may, by a resolution authorize any other member other than the Vice President to jointly operate the account along with the President. Provided that prior approval of the Inspector of Panchayats (District Collector) will be obtained for this"

7. The petitioner in W.P.No. 1828 of 2004 has alleged that he is the Vice-President of Brammapuram Village Panchayat, Katpadi Taluk, Vellore District. It is alleged by the petitioner in paragraph-3 of the affidavit that the President of the Village Panchayat is doing several acts detrimental to the interest of the panchayat, and he misused his power to the extent possible. The petitioner has alleged that the President of the Village Panchayat got a resolution passed on 07.10.2002 to the effect that the powers of the Vice-President to sign the cheque should be cancelled, and such power should be given to another member Mr.V.Srinivasan. Pursuant to the said resolution, and the recommendation of the Block Development Officer, Katpadi, the District Collector/first respondent passed an order cancelling the writ petitioner's power to sign the cheques jointly with the President and granting the power to Mr.V.Srinivasan. It is alleged that this order is violative of Section 188(3) of the Act. The petitioner has alleged that there was no delay on his part to sign the cheques. He has further alleged that he was available and has not been removed and hence, it cannot be said that he was absent. It is further alleged that the rules of natural justice were violated, as no notice was given to the petitioner before passing the impugned order.

8. A counter affidavit has been filed by the first respondent, the District Collector, Vellore, who is also the

Inspector of Panchayats, Vellore District. In paragraph-4 of the counter, it is alleged that the Vice-President did not co-operate with the smooth functioning of the village panchayat and therefore, Brammapuram Village Panchayat in its resolution dated 12.09.2002 and 07.10.2002 resolved with the majority of 6 members except the petitioner and one other member to change the joint signatory power from the petitioner to the first ward member Mr.Srinivasan. In paragraph-5 it is stated that the proceeding of the first respondent is passed on the basis of the resolution of the village panchayat dated 12.09.2002 and 07.10.2002 and in tune with G.O.Ms.No.92 Rural Development (C2) Department dated 26.03.1997. It is also in tune with Section 188 (3) of the Act. The petitioner filed the writ petition after the lapse of one year and two months. The order of the first respondent has been in effect for this period. The reason for changing the signatory power of the Vice President was that whenever the cheque was given for signature to him, he would either return the cheque without signing it or he used to demand a percentage to sign the cheque. It is alleged that there was non-cooperation on the part of the vice president in running the village administration. It is alleged that there was no violation of natural justice.

9. Counter-affidavit has also been filed by the second respondent/President of the Village Panchayat. It is alleged in paragraph-7 of the counter that the District Collector, Vellore in his capacity of Inspector of Panchayats has the power and jurisdiction to cancel the power of signing the cheque in view of G.O.Ms.No. 92, Rural Development (C2) Department dated 26.03.1997. It is alleged that the District Collector has to look to the interest of the smooth functioning of the village panchayat and not the interest of the individual. It is alleged that the District Collector, as Inspector of Panchayats, has acted in accordance with G.O.Ms.No.92 Rural Development (C2) Department dated 26.03.1997. It is alleged that whenever a cheque was taken for the signature of the Vice-President he would either return the cheque without signing it or used to demand a percentage of money to sign the cheque. It is alleged that the contention of the petitioner that there was no undue delay on his part to sign the cheques is factually not correct. In paragraph 7 of the counter affidavit, it is also alleged:-

" The petitioner refused to sign in 1). Cheque No.018486 dated 11.09.2002 for a sum of Rs.,19,180/- issued in favour of Block Development Officer, Katpadi Municipality Union for receipt of cement bags for the scheme work 2). Cheque No.021492 dated 01.10.2002 for a sum of Rs.6,270/- issued in favour of the Panchyat Assistant for the

disbursement of salary to the panchayat employees. 3). Cheque No. 021493 for a sum of Rs.3,928/- issued in favour of Mr.Rajagopal for maintenance of water supply. 4). Cheque No.021494 dated 02.10.2002 for a sum of Rs.500/- issued in favour of Tamilselvi towards the funeral rights of her husband as per the Government scheme. 5). Cheque No.021495 dated 02.10.2002 for a sum of Rs.2,900/- issued in favour of Panchayat Assistant Rajagopal for the maintenance of street light. 6). Cheque No. 021626 for a sum of Rs.19,930/- issued in favour of Vasu and Co. approved dealer for supply of accessories in maintenance of water supply and street light. The President has not made any false allegation against the petitioner. The first respondent has passed order based on the resolution of the Pinhead and the report of the Block Development Officer (VP), Katpadi who is the controlling officer for Panchayats of Panchayat Union, Katpadi. It is apt to point out at this juncture that all the other six members and the President fall on one side and the petitioner and two other members is against the interest of the smooth functioning of the Village Panchayat"

10. It is further alleged that the Panchayat Council of Brammapuram Village Panchayat had resolved to authorize another member to sign the cheque as the per the Government order in G.O.Ms.No.92 Rural Development (C2) Department dated 26.03.1997. It is alleged that there is non co-operation of the Vice President in the smooth functioning of the village administration. In paragraph-12 it is alleged that there was a compromise, but subsequently the petitioner failed to keep his words to cooperate with the panchayat administration by signing the cheques as usual, and he abruptly refused to sign the cheques and hence, the second respondent passed order on 07.10.2002 to know the views of the panchayat. Six ward members, and the President voted in favour of the resolution dated 07.10.2002 changing the joint-signatory power of the Vice-President and empowering the first ward member to sign jointly with the President. In paragraph-13 of the counter, it is denied that the petitioner was not given any notice. He was served with the agenda for the resolutions passed on 12.09.2002 and 07.10.2002. The petitioner participated in the meeting and voted against the resolution along with two other members. The Block

Development Officer, Panchayat Union, Katpadi on 16.10.2002, conducted necessary enquiry. The petitioner also attended the enquiry along with the ward members. Six members gave in writing that the petitioner is not co-operating with the President in the administration of the panchayat, and he refused to sign the cheques and thereby there is stagnation in the administration. The Panchayat Assistant also gave in writing to that effect. In paragraph-14 of the counter it is alleged that the petitioner was not discharging his duties as Vice-President diligently, sincerely and in the interest of the public.

11. The learned single Judge, who heard the writ petition, allowed the same by judgment dated 17.04.2004. The view taken by the learned single Judge was that if the Vice-President refused to sign the cheques, then action should have been taken against him either under Section 203 or under Section 206 of the Act. Under Section 206, power vests with the Inspector to remove the Vice-President. Section 206 states: -

"(1) If in the opinion of the Inspector, the vice-president willfully omits or refuses to carry out or disobeys any provisions of the Act, or any rule, by-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 vice-president to offer within a specified date, his explanation with respect to his cases of omission or commission mentioned in the notice.

(2) the provisions of sub-sections (2) to (13) (both inclusive) of section 205 shall, as far as may be, apply in relation to the removal of the president by the Inspector on his own motion."

12. Section 203 of the Act confers emergency powers on the Collector and Inspector. However, the learned single Judge was of the view that unless the Vice-President is absent, a member cannot be authorized by the village panchayat to sign the cheque. According to the learned single Judge, refusal or omission to sign the cheque does not amount to absence of the Vice-President. Such refusal can only attract Section 206 of the Act, and it does not amount to absence under Section 188(3) of the Act.

13. In paragraph-15 of his judgment, the learned single Judge has observed: -

" The recommendations of the committee constituted for rationalization of the village panchayat accounts, which was accepted in G.O.Ms.No.92, Rural Development (C.III) Department dated 26.3.1997, is also in tune with the principles laid down in Section 206 of the Act. Even though the said Government Order empowers the panchayat to authorize the president and another ward member, such a resolution could be passed only with the prior approval of the Inspector of Panchayats, obtained in this regard, as provided in the Government Order dated 26.3.1997, which means that no resolution could be passed without the prior approval of the Inspector of Panchayats. Hence, the statute contemplates that if the Vice-President refuses to sign the cheque for the operation of the village panchayat fund, it is obligatory on the part of the president to seek the prior approval or permission from the Inspector of Panchayats to proceed with the matter. In such event, the Inspector, either exercising the powers conferred under Section 206 of the Act, seek an explanation from the vice-president as to the refusal to sign the cheques, or alternately exercise the emergency powers vested on him under Section 203 of the Act referred to above, and pass appropriate directions as temporary arrangement, in order to maintain the day to day affairs of the panchayat. But, in no case the president can pass any resolution without the prior approval of the Inspector of Panchayats. Reading Sections 188(3), 203 and 206 of the Act harmoniously, makes it clear that once prior approval or permission to take action against the Vice President, who refuses to sign the cheque, is sought for, a duty is cast on the Inspector of Panchayats to seek an explanation from the vice-president and pass appropriate orders. Therefore, the Inspector of Panchayats, before proceeding further on the allegation of refusal to sign the cheque against the vice-president, has to read the procedure contemplated under Section 206(1) of the Act, into the procedure provided under Section 188(3),

before giving effect to any such resolution. Pending such action, the Inspector of Panchayats is at liberty to invoke emergency powers conferred Section 203 of the Act"

14. We agree with the learned single Judge that before granting prior approval to the resolution of the Village Panchayat authorizing any other member to operate the account along with the President, as provided by G.O.Ms.No.92, Rural Development (C.III) Department dated 26.3.1997, the Inspector of Panchayats (District Collector) has to give a notice to the Vice President and an opportunity of hearing to him. Such hearing need not be a personal hearing and he can only be given a show cause notice asking him to give a reply to the allegations in the show cause notice within a reasonable period. In our opinion, such a procedure would comply with the principles of natural justice, and it is not necessary that the Vice President must be allowed to appear in person along with his counsel, witnesses etc. vide *M.P.Industries vs. Union of India*, 1966 SC 671 (vide paragraph 20), *Anil Kumar Srivastava v. Chairman, L.I.C of India* (2003 ALJ 1744), *Narain Das Jain v. C.W.T* (Vol.191 ITR 126) etc. As observed by the Supreme Court in *Board of Mining Examination v. Ramjee*, and AIR 1977 SC 965, *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, 2001 (1) SCC 182 natural justice is not an unruly horse. The rules of natural justice are flexible and are not a strait-jacket formula, vide *Bar Council of India v. High Court of Kerala*, JT 2004 Supp. (1) SCC 428 (paragraph-47), *The M.S.F.C v. M/s. Suvarana Board Mills & Anr.*, (JT 1994 (5) SC 280), *Union of India v. Tulsiram Patel* (AIR 1985 SC 1416).

15. In *Union of India & Anr. v. M/s. Jesus Sales Corporation*, JT 1996 (3) SC 597 (vide paragraph-5), the Supreme Court observed: -

"The Courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are

expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded.

16. In the present case, we are satisfied that there was violation of natural justice, since no notice was given by the Collector before passing order dated 07.11.2002. This averment has been specifically made by the writ petitioner in paragraph-4 of his affidavit as well as in ground (d), but there is no specific denial of this allegation by the Collector in his counter affidavit. Hence this allegation must be deemed to be correct.

17. It is true that a G.O or Executive Order cannot violate a statutory provision. However, if the statute and the G.O can be read harmoniously then effort should be made by the Court to do so. Under G.O.Ms.No.92 dated 26.03.1997, in exceptional cases, where there is adversarial relationship between the President and the Vice President, the Panchayat, may, by a resolution, authorize any other member other than the Vice President (or President, as the case may be) to jointly operate the account along with the President (or Vice-President). However, prior approval of the Inspector of

Panchayats (District Collector) has to be obtained for this.

18. The question which arises in this case is, where if the Vice President (or President, as the case may be) has adversarial relationship with the President (or Vice President) of the Panchayat, and if for ulterior motive he refuses to sign the cheque, can this be treated as his 'absence'?

19. In other words, whether the provision in G.O.Ms.No.92 dated 26.03.1997, which states that in exceptional cases where there is adversarial relationship between the President and the Vice President, the panchayat, may, by a resolution authorize any other member other than the Vice president (or President, as the case may be) to jointly operate the account along with the President (or Vice President), is inconsistent with Section 188 (3) of the Act?

20. In this connection, it may be mentioned that the Supreme Court in B.R.Enterprises Vs. State of U.P (1999 (9) SCC 700) (vide paragraph-81) observed: -

"It is also well settled that first attempt should be made by the Courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted"

Hence, we have to see whether there can be a reasonable interpretation, which makes G.O.Ms.No.92 dated 26.03.1997 consistent with Section 188(3) of the Act. In Tamil Nadu Electricity Board and Anr. v. Tamil Nadu Electricity Board Engineers' Association (W.A.No.1081 of 2004 delivered on 28.01.2004, we have discussed the scope of judicial review of administrative orders in great detail. We have observed that the Court should exercise judicial restraint and should not readily strike down administrative orders, unless it is wholly unavoidable. The entire case law on this issue has been discussed in the aforesaid judgment, and we reiterate the same.

21. The word 'absence' can have several connotations. It can mean physical absence, but it can also mean mental absence, in the sense of showing 'lack of attention', vide 'The Concise Oxford Dictionary (tenth edition)'.

22. In Collins 'Concise Dictionary' (21st Century Edition),

the word 'absent' has been defined as; - 1) away or not present. 2) lacking 3) inattentive. Thus, the word 'absent' does not merely mean being not physically present, but it can also mean lacking or inattentive, which really means 'mental absence'.

23. In "The Chambers Dictionary (1998 Edition)", the word 'absent' has been defined as: -

" being away; not present; inattentive or dreamy".

The word 'absence' has been defined in the same dictionary as follows: -

" state of being away or not present; want or lack; non-existence; abstraction; inattention; sudden loss of consciousness of which the sufferer is later unaware.

The above definition in Chambers Dictionary would also indicate that the word 'absence' does not have one single meaning.

24. In "The New International Webster's Dictionary and Thesaurus" the word ' absence' has been defined as follows: -

"1) The state, fact, or time of not being present. 2) Lack; want. 3) Mental abstraction; lack of attention"

Thus, the above definition also indicates that one can be absent in the sense of being inattentive or being mentally absent without being physically absent.

25. In our opinion, we can give a wider meaning to the word 'absence' than mere 'physical absence'. One word can have several meanings, just as several words can have one meaning (synonyms). It all depends on the context in which it has been used. For example, the word 'desertion' appearing in Section 13 of the Hindu Marriage Act implies not only factum of separation, but also "animus deserendi", vide Lachman 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 procedure mentioned in sub-sections (2) to (13) of Section 205 is very elaborate and cumbersome.

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

28. In view of the above discussions, we are of the opinion that G.O.Ms.No.92 dated 26.03.1997 is not violative of Section 188(3) of the Act and the two can be read harmoniously as stated above.

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.

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.

32. The writ appeal is disposed of accordingly. No costs.
Consequently, W.A.M.Ps are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

pv/

Copy to:

1. The District Collector,
(Inspector of Panchayats)
Vellore District,
Vellore.

2.The Secretary to Government
The Government of Tamil Nadu
Rural Development Department,
Fort.St.George,
Chennai - 600 009.

3.The Block Development Officer
Katpadi, Panchayat Union,
Katpadi.

+1cc to Govt. Pleader Sr 3307

+1cc to M/s. V.Suthakar, Advocate Sr 3217

+1cc to M/s. V.Sanjeevi, Advocate Sr 3226

AK (CO)
km/31.1.

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