

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.10.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.24183 of 2023

and

WMP(MD)Nos.20347 & 20349 of 2023

Tamil Nadu All Village Panchayat
Presidents Welfare Association,
Rep.by its President S.M.Muniyandi,
No.36, Arasakulam Village,
Milaganur, Manamadurai Taluk,
Sivagangai District.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by its Secretary to Government,
Rural Development and Panchayat Raj
Department,
Secretariat, St.George Fort,
Chennai.
- 2.The Director of Rural Development
and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai – 15.
- 3.The District Collector,
Sivagangai District.
- 4.The Project Director,
District Rural Development Agency,
Sivagangai, Sivagangai District.



5.The Assistant Director of
Village Panchayats,
Sivagangai, Sivagangai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the third respondent in his proceedings in Na.Ka.D.A10/2707/2023 dated 15.09.2023 insofar as condition No.4 is concerned and quash the same as illegal and consequentially to direct the respondents to restore the jurisdiction of the Presidents of Village Panchayats in inviting tenders in respect of the basic works (Drinking Water Connection) to be carried out in the Village Panchayats in accordance with the provisions of the Tamil Nadu Panchayats Act, 1994.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.K.Balasubramani,
Special Government Pleader

ORDER

By the impugned proceedings dated 15.09.2023, the District Collector, Sivagangai accorded administrative sanction for the petition-mentioned works to be carried out under Jal Jeevan Mission Scheme.



WEB COPY

The petitioner has grievance with regard to only one aspect. The power to invite and accept tenders for carrying out the said works has been conferred on the jurisdictional Block Development Officers (Village Panchayats). In case of need, the District Collector can be the Tender Accepting Authority. The case of the petitioner is that since the works are village-specific, it is the Panchayat President who must be given the power to invite and accept tenders.

2.The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed for.

3.The learned Additional Advocate General questioned the very maintainability of the writ petition. According to him, an association cannot maintain a writ petition. He added that the impugned proceedings are in consonance with G.O Ms No.111 RD&PR Department dated 16.06.2020. The said G.O has not been challenged. The impugned methodology has been followed for the last three years. His foremost contention is that this issue had already been decided in favour of the government by a learned Judge of this Court vide order dated 31.07.2020

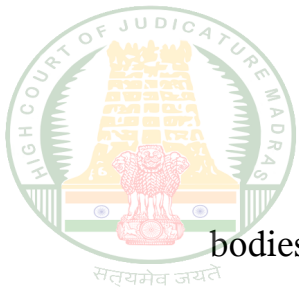


in WP Nos.5495, 9594 and 9735 of 2020 (Mrs.Parvathi and another vs.

WEB COPY The Government of Tamil Nadu). He called upon this Court to dismiss the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. It is true that the very issue raised in this writ petition had already been decided by a learned Judge of this Court in the aforesaid writ petitions. Every contention now raised by the learned Senior Counsel for the petitioner was considered and negatived. It is stated that writ appeal was filed questioning the said order but subsequently withdrawn. In fact, the learned Judge was pleased to endorse the approach set out in WP (MD)No.5068 of 2020 etc., batch (R.Manimegalai vs. The District Collector, Madurai).

5.I am however not able to tread the same path. When tenders were floated for carrying out certain road works under the 14th and 15th Finance Commission, elected Presidents of some of the Village Panchayats in Madurai and Sivagangai Districts filed WP (MD)Nos. 8929, 9415, 9545 and 9554 of 2020 (P.Kaliyuganathan and ors vs. The State of Tamil Nadu). I sustained and upheld the contentions of the local



WEB COPY

bodies. I made it clear that the elected bodies/Village Panchayats cannot be by-passed. There is a clear dissonance between the orders in *Manimegalai* and *Parvathi* on the one hand and *Kaliyuganathan* on the other.

6. Article 40 of the Constitution of India is as follows :

“40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

The concept of Panchayati Raj gained a firm foothold in the Constitution with the introduction of Part IX vide the 73rd Amendment w.e.f 24.04.1993. Article 243G of the Constitution is as follows :

“243G. Powers, authority and responsibilities of Panchayats.- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”



WEB COPY

Serial No.11 of Schedule XI deals with “Drinking water”. As per Section 83 of the Act, the President of the village panchayat has been appointed as its executive authority. Section 84(c) of the Tamil Nadu Panchayats Act, 1994 is as follows :

“84. Functions of Executive Authority.- The Executive Authority shall,-

(c)discharge all the duties specifically imposed and exercise all the powers conferred on the Executive Authority and subject to all restrictions and conditions imposed, by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment of the purposes thereof.”

Chapter VIII of the Act sets out the functions, powers and property of village panchayats, panchayat union councils and district panchayats.

Section 110 (g) of the Act is as follows :

“110. Duty of Village Panchayat to provide for certain matters.- Subject to the provisions of this Act and the Rules made thereunder, it shall be the duty of Village Panchayat, within the limits of its funds, to make reasonable provision for carrying out the requirements of the Panchayat Village in respect of the following matters, namely:-

.....



WEB COPY



(g) the sinking and repairing of wells, the excavation, repair and maintenance of ponds and the construction and maintenance of water-works [for the supply of water for drinking, washing] and bathing purposes.”

7. Jal Jeevan Mission (JJM) has been launched which aims at providing Functional Household Tap Connection (FHTC) to every rural household by 2024. Its vision is that every Rural Household to be provided with drinking water supply with adequate quantity (55 LPCD) of prescribed quality on regular and long-term basis at affordable service delivery charges leading to improvement in living standards of rural communities. The main objective is to provide a Functional Household Tap Connection (FHTC) to every household in rural areas in the State.

8. The Manual for the utilisation of the 15th Finance Commission tied grant to rural local bodies/PRIs for water and sanitation has been enclosed in the typed set of papers. The learned Senior Counsel for the petitioner took me through its contents. I find that the grant is disbursible only to the duly elected local bodies. The petition-mentioned works envisage taking of water from the overhead tank to the individual households. Thus, the works are obviously village-specific. There is no



WEB COPY

overlapping or involvement of more than one village. Since the village roads are vested in the panchayat, without their approval, pipelines cannot be laid. However, the learned Additional Advocate General drew my attention to the relevant clause G.O Ms No.111 dated 16.06.2020 which provides for tripartite agreement involving the panchayat, the contractor and the District Water and Sanitation Mission.

9.The fact remains that the petition-mentioned works fall within the domain of the local bodies. The Constitution as well as the scheme underlying the Tamil Nadu Panchayats Act, 1994 unambiguously provide that it is the local body that must carry out works relating to drinking water. The funds of the Central Government to implement Jal Jeevan Mission Scheme are disbursible only to the local bodies. I am therefore of the view that the panchayat presidents cannot be bypassed. They cannot be reduced to the level of rubber stamps.

10.The Father of the Nation dreamt of Gram Swaraj. We have forgotten J.C.Kumarappa. Regional parties that wax eloquent on federalism and demand devolution of powers want the powers to remain concentrated at the State capitals.



WEB COPY

11. Since a learned Judge of this Court had already rejected the contentions now advanced by the petitioner, it would not be proper for me to allow this writ petition. I therefore direct the Registry to place the papers before the Hon'ble Chief Justice to take a call in the matter.

05.10.2023

Index : Yes / No

Internet : Yes/ No

SKM

To:

1. The Secretary to Government,
Rural Development and Panchayat Raj
Department, Secretariat, St. George Fort, Chennai.
2. The Director of Rural Development
and Panchayat Raj Department,
Panagal Building, Saidapet, Chennai – 15.
3. The District Collector, Sivagangai District.
4. The Project Director, District Rural Development Agency,
Sivagangai, Sivagangai District.
5. The Assistant Director of Village Panchayats,
Sivagangai, Sivagangai District.



WEB COPY



G.R.SWAMINATHAN, J.

SKM

WP(MD)No.24183 of 2023
and
WMP(MD)Nos.20347 & 20349 of 2023

05.10.2023