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W.P.No.5240 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.5240 of 2018
and W.M.P.Nos.6429 & 6430 of 2021

Rev. V.Thomas

...Petitioner

-Vs-

1. The Home Secretary to Government,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. The District Collector,
Kancheepuram District,
Kancheepuram – 631 501.

3. The Superintendent of Police,
Kancheepuram District,
Kancheepuram – 631 501.

4. The District Social Welfare Officer,
Social Welfare Department,
Kancheepuram – 631 501.

5. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Collector Office Campus,
Kancheepuram – 631 501

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, to call for the records culminated in



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impugned show cause notice in ref.ந.க.2629/2017/அ1, dated 22.02.2018, issued by the fifth respondent and quash the same as illegal.

For Petitioner : Mr.R.Prabhakaran

For Respondents : Mr.L.Baskaran
Government Advocate (Crl. Side)

ORDER

This writ petition has been filed challenging the show cause notice issued by the fifth respondent dated 22.02.2018, thereby calling upon explanation from the petitioner.

2. The petitioner is a Catholic Priest, Managing Director of St. Joseph Hospice. In the year 2011, to cater the needs of the people, who are on the verge of death, akin to the concept of Palliative medicine, wherein normally, the people who got admitted in the petitioner's Hospice would be in the stage of death viz., with advance incurable diseases with lot of physical, emotional and social problems. It was established in the year 2011. The concept of Hospice is taking care and focusing upon the critically ill, terminable patients by giving them the environment of treating the sick, wounded or dying.



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3. The Hospice is running with permission of the Government of Tamilnadu as per the order dated 28.12.2011, issued by the Social Welfare Department. Every inmate brought to the institution is registered with their photograph along with signature/thump impression. While being so, there was a complaint alleging that the deceased inmates were buried in the same Hospice and they were not given any proper medical facilities, in order to extract money from the petitioner. On receipt of the same, it was forwarded to fifth respondent and he issued show cause notice dated 22.02.2018 under Section 133(a) of Cr.P.C. The petitioner also submitted detailed explanation for the show cause notice.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. It is seen that the petitioner filed Habeas Corpus Petition before this Court in H.C.P.No.570 of 2018 seeking direction to produce the detenus and set them at liberty. In the said petition, the Hon'ble Division Bench of this Court appointed an Advocate Commissioner and



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directed him to interact with various prior inmates and act in the following manner :

“(i) Such of those prior inmates, who desire to return to petitioner's St. Joseph Hospice, shall be permitted to do so.

(ii) Such of those prior inmates who are of discerning mind in the opinion of the psychiatrist, and who desire not to return to petitioner's Hospice, shall be permitted to act in keeping with their intent. Such intent may include not only not returning to petitioner's hospice but also leaving the home where they are presently housed.

(iii) Where prior inmates are not of discerning mind, the opinion of their immediate relatives may be taken into consideration and a decision with regard to their shifting or otherwise to petitioner's hospice may be taken there upon.

(iv) Where prior inmates are not of discerning mind and have also no relatives, a view on the matter can be taken between the petitioner's hospice and the home/places housing such persons as to where they are to be accommodated.

(v) Should any home/place where inmates were handed over inform that persons have died at their hands, the Advocate Commissioner may also record such fact and ascertain and inform in the report the manner in which the body of the deceased had been dealt with.



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6. The report of the Advocate Commissioner revealed that there hardly has been any whisper by the inmates who came to be housed at various places against the functioning of the Hospice or those in charge thereof. Many have expressed great satisfaction at the manner in which they were taken care of and treated at the Hospice. While 53 had returned to the Hospice, some had been placed in the custody of family members, most others who have informed desire to stay put had informed such intent, not owing to any wrong on the part of Hospice but on the ground that they earlier were not able to get admission into their present places of stay. Further revealed that that 53 more persons are to be returned to the care and custody of the Hospice.

7. Further, in the said Habeas Corpus Petition, the Hon'ble Division Bench of this Court by an order dated 31.09.2019, observed as follows :

“5. In carrying the body of a deceased in a vehicle carrying food articles offence indeed stands made out. Though intention is a rule of evidence and lack of mensrea towards committing offences is a matter for trial, we are left



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asking ourselves the question whether in a case like this we can, by the wildest imagination, read intent of committing an offence through the offending act. Mother Teresas are hard to come by and many of us would not come anywhere close. Petitioner's Hospice tends to those hardly living and the nearly dead. Petitioner informs that the services of the Hospice has been availed of by all the respondents at various points of time. When poor and dying destitutes have been found on the streets, respondents have looked to the Hospice to act in aid and the Hospice has time and again obliged. This assertion of the petitioner has not been denied by any of the respondents. A major charge against the Hospice relates to burials of the deceased in cement vaults. Petitioner informs that such vaults had the approval of the District Collector. In fact, a layman access to 'Google' informs that such burial procedure has become quite an acceptable one. Respondents' case is that such procedure besides being disrespectful towards the deceased, is unhygienic, unsafe and could lead to spread of infections and disease. Petitioner, besides contending that the procedure has found wild acceptance in Kerala also submits that the water needs of the Hospice are met by borewells and if the procedure was unsafe, it is against the interest of the Hospice to adopt Cement vault burial.

6. A wholesome approach is necessary. There certainly could be errors and minor irregularities in the



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conduct of the Hospice. Officialdoms approach should not be that of picking up cudgels but one of calling for correction/rectifications where necessary and in aiding those who venture and go about the task of carrying out 'God's own work on Earth'. The nature of work carried out by the petitioner's institution and its grievance can best be informed by referring to his communication dated 21.03.2018 addressed to the respondents: 'Respected Sirs,

1. I, Rev.V.Thomas, Christian Pastor, aged 67 years, son of R.J.Varghese, at St.Joseph's Hospice, Paleswaram Village, Uthiramerur Taluk, Kancheepuram District. In the year 2011, to cater the needs of the people, who are on the verge of death, akin to the concept of Palliative medicine, wherein normally, the people who got admitted in the institution would be in the stage of death viz. with advanced incurable diseases with lot of physical, emotional and social problems. The concept of running the institution, on certain occasions, the patients would be admitted based upon the approval memo issued by the competent police, and on certain occasions, by the hospital authorities by giving the discharge summary, on certain occasions, left against (LAMA) the medical advice. The institution is involved in providing the life to make them live by giving dedicated, dignified treatment during their last days.

2. Accordingly, the institution was established in the year 2011 in the 17 acres of land and is surrounded with



greenery, with the facility of more than 300 beds in seven wards, separate wards for men and women with enough and clean toilet and other facilities. The inmates are given every day bath and are provided with washed and dried clothes, and the inmates are provided with healthy four meals per day, and they are taken care round the clock, and the institution is functioning as per the established procedures.

3. The concept of Hospice is not hospital, but taking care and focusing upon the critically ill, terminable patients by giving them the environment of treating the sick, wounded or dying. The etymology of the term “HOSPICE” derived from the latin word “Hospes”, meaning to serve double duty in the concept of guests and hosts. Such concept has been increasing in the other areas. It draw the attention of United Kingdom in the middle of the 19th century with Lancet and the British Medical Journal publishing articles pointing to the need of the impoverished terminally ill for good care and sanitary conditions. Such a rise of Hospice and the modern Hospice treatment evolved across the African countries, Northern America and United Kingdom. Since 2006, the World Hospice and Palliative Care Day is organized by a committee of the Worldwide Palliative Care Alliance, a network of hospice and palliative care national and regional organizations that support the development of hospice and palliative care worldwide.



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4. *The main purpose of the institution is to take care and protect the interest of dying destitutes, who are abandoned and 11 orphaned by their family, children or relatives at the public streets, pavements, railways station, bus stand, hospitals, etc., by our noble cause of the service by performing exclusive last rites. As per the equality, the institution takes care of the destitutes, irrespective of their religion, region, caste, creed and language. On certain occasions, the patients would be admitted based upon the approval memo issued by the competent police, and on certain occasions, by the hospital authorities by giving the discharge summary, on certain occasions, left against (LAMA) the medical advice. The institution is involved in providing the life to make them live by giving dedicated, dignified treatment during their last days.*

5. *When the death of the dying destitute are happened, the routine and normal procedures are being adopted by informing the same to the Village Administrative Officer, local police and local Panchayat. After proper inspection of the facility for the Concrete Vault procedure, in one of the Proceedings dated 18.08.2011, the District Collector and Superintendent of Police based upon our letter dated 20.04.2011, after obtaining legal opinion from the Deputy Director of Prosecution, had stated that the legal formalities, informing the local police, to bury the deceased and accordingly, it has been duly intimated to the local*



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police and Village Administrative Office.

6. While so, due to malafide or enimity where the local politician G.Karunakaran, who seemed to have developed a nexus with the local contractor, who was involved in the construction of institution's building, demanded illegal money from the institution and on refusal, had created and induced the authorities and made several anonymous complaints as against the institution, by assassinating the characters of the founder and members of the institution. Pursuant to that, the Revenue department and the Social Welfare Department had issued the show-cause notices to the institution. Aggrieved by the same, we filed W.P.No.5240 of 2018 before the Hon'ble High Court of Madras and the Hon'ble Court had granted interim stay of all further proceedings. Similarly, we filed Writ Petition before the Madurai Bench of the Hon'ble High Court and the Hon'ble Court had granted interim injunction by order dated 15.03.2018.

7. With the background of vested politicians, false rumours were spread that the Hospice tortured old people and harvesting their bones and organs. It is also complained that we detain some of the children. I submit that our institution is run for dying destitute and no child is admitted in the institution or taking care of any child. Some of the some members of the Hospice are staying in the Institution along with their children.



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8. Pursuant to the false media report, the Government officials viz., Tahsildar, Revenue Divisional Officer, Village Administrative Officer, Health Department, Police Department, Social Welfare Department came to our institution and had illegally taken 294 inmates/patients from our institution during the period from 25.02.2018 to 28.02.2018 and the whereabouts of the inmates is unknown to us. On that fateful days, under the guise of issuing show cause notice under Section 133(a) of Cr.P.C. dated 22.02.2018 by the Sub-Divisional Magistrate cum Revenue Divisional Officer, Kancheepuram, without any direction or order from the competent court and without following any of the law and procedures, the Government authorities in a high handed and arbitrary manner, had illegally removed the inmates just like herds of cattle and dumped them in vehicles brought by them, without even obtaining the signatures of the inmates. Majority of the inmates made to suffer much pain and agony. Majority of the inmates are under dying stage, wherein we also put to inform that while executing the process itself, one of the inmates seems to have died. Thereafter, the authorities had themselves handed over the dead body to our institution for burial. Further, few children, who are living in our institution along with their parents and are studying in a reputed school, were thrown away to the vehicle much to the shock and surprise and it was a hot scenario of everyone.



9. I am put to inform that the above incidents were sphere headed by the local goondas and rowdies and some of the religious fringe elements, who had carried out the operation with the blessing and support of the Government officials. Till date, the status and conditions of the inmates are not known and not revealed to us, who were housed, nurtured, treated and protected by our institution.

10. The inmates have been illegally kept as captives and their whereabouts is not known and the authorities after several requests from our institution and the constant follow-up by our staff members Mr.Alex and others, the authorities did not reveal the status and whereabouts of the inmates. We made several complaints, which were not accepted by the authorities. Having no other go, the present complaint is made. Through hearsay evidence and other informations, we came to know that some of the inmates have been dropped on the road sides and one such inmates, who is difficult to understand out of his own, had voluntarily back to our institution, and he is currently protected by our institution.

11. Despite several requests and reminders, the status and position of the 294 inmates have not been informed to us. Since their life, limb, safety and security are under threat, the officials are duty bound to inform their status and also produce the inmates to our institution to ascertain their true status and position.



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I therefore request your goodself to take the complaint on file and trace the inmates and order for relieving them from the illegal custody and hand over them to our institution.'

Therefore, there is absolutely no need to proceed under Section 133(a) of Cr.P.C., as against the petitioner. Hence, the impugned show cause notice cannot be sustained and it is liable to be quashed.

8. Accordingly, the show cause notice in ref.ந.க.2629/2017/அ1, dated 22.02.2018, issued by the fifth respondent, is hereby quashed and the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

23.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.

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To

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Government of Tamil Nadu,
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Revenue Divisional Officer,
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6. The Public Prosecutor,
Madras High Court,
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