

GAHC010053472024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1552/2024

SEWA ASHRAM
REP. BY SRI MADHAB KRISHNA GOSWAMI ,
CHAIRMAN,
SRI SRI SEWA ASHRAM,
VILL- BORPATHAR,
P.O- MADURIPATHAR,
P.S- DHEMAJI,
PIN-787059,
DIST- DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
THROUGH THE COMMISSIONER AND SECRETARY,
GOVERNMENT OF ASSAM,
SOCIAL WELFARE DEPARTMENT,
DISPUR, GUWAHATI-781006.

2:THE DIRECTOR OF SOCIAL WELFARE
UZANBAZAR
GUWAHATI- 781001
ASSAM

3:THE STATE CHILD PROTECTION SOCIETY
REP. BY ITS MEMBER SECRETARY
BELTOLA GUWAHATI-28
ASSA

Advocate for the Petitioner : MR P P MEDHI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 18.03.2024

Heard Mr. P. P. Medhi, learned counsel for the petitioner, who submits that the petitioner is an NGO, working in the field of child welfare and represented by its Chairman Sri Madhab Krishna Goswami. He submits that the petitioner was registered in the year 2012 under Section 34(3) of the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short, 'the Act') and later as Specialized Adoption Agency (in short, 'SAA') under Section 65(1) of the Act. He submits that the petitioner had been working tirelessly towards child welfare and was recognized as a reputed Orphanage & Child Adoption Agency until the cancellation of its registration in the year 2018, vide order dated 18.05.2018.

2. The petitioner's counsel submits that two criminal cases regarding rape were registered against the petitioner, i.e., Silapathar P.S. Case No. 150/2009 under Sections 376/506 of the IPC and Silapathar P.S. Case No. 12/2018 under Sections 376(2)(f)/354 of the IPC. He submits that the Sessions Court had acquitted the Chairman of the petitioner organization in both the cases. The petitioner thereafter approached the Member Secretary, State Child Protection Society, Assam, with a prayer to cancel the order dated 08.05.2018 and to re-registrar the petitioner organization to allow it to function as a Children Home and Specialized Adoption Agency. However, as there was no response from the authorities, this Court should set aside the order of cancellation of registration dated 08.05.2018 issued by the Member Secretary, State Child Protection Society, Assam and to allow the petitioner organization to continue to work as a Children Home and as Specialized Adoption Agency.

3. The petitioner's counsel also submits that the present case can be disposed of, in terms of the order dated 13.06.2022 passed in WP(C) 2212/2019, as the facts are similar.

4. Ms. U. Das, learned counsel for the State respondents, on the other hand, submits that there is no infirmity in the order of cancellation dated 08.05.2018 issued by the Member Secretary, State Child Protection Society, Assam, inasmuch as, two cases of rape had been registered against the Chairman of the petitioner organization. She also submits that re-consideration of whether the registration of the petitioner organization as a Children Home and as a Specialized Adoption Agency should be left entirely to the discretion of the State respondents, keeping in view the fact that the Chairman had two criminal cases, involving rape.

5. I have heard the learned counsels for the parties.

6. As can be seen from the contents of the writ petition, two cases had been registered by the Silapathar Police Station against the petitioner, which resulted in two criminal cases being taken up by the Sessions Court, Dhemaji, one being Sessions Case No. 107(DH)/2010 under Section 376(1) of the IPC, arising out of Silapathar P.S. Case No. 150/2009. The Sessions Court acquitted the Chairman of the petitioner organization from the charge under Section 376(1) of the IPC on giving him the benefit of doubt.

7. The other case before the Court of learned Sessions Judge, Dhemaji pertains to Sessions Case No. 22/2018 arising out of Silapathar P.S. Case No. 12/2018 under Section 354/376/511 of the IPC. The Sessions Court vide judgment dated 21.11.2018 passed in Sessions Case No. 22/2018 had acquitted

the Chairman of the petitioner organization from the charge under Section 354/376/511 of the IPC, on the ground that the prosecution failed to prove its case beyond all reasonable doubt.

8. Thus, as it can be seen from the above that two criminal cases that had been registered against the Chairman of the petitioner organization, the same resulted in acquittal of the Chairman.

9. Vide, the impugned order dated 18.05.2018, the registration of the petitioner organization to run the Children Home and Specialized Adoption Agency had been cancelled, in view of the two criminal cases having been filed against the Chairman of the petitioner organization. The fact that the Chairman of the petitioner organization has been acquitted of the charge framed against him in above two criminal cases, does not *ipso-facto* mean that the petitioner organization should automatically be given registration to run the Children Home & the Adoption Agency again, given the fact that criminal cases had been registered against the Chairman of the petitioner organization. Further, many changes could have taken place between then and now, on many fronts. This Court is of the view that the question of giving registration to the petitioner organization for running a Children Home& Adoption Agency, should be left entirely to the discretion of the authorities concerned and this Court is not inclined to exercise its discretion in the above matter, given the facts and circumstances of the case.

10. On considering the facts of the case in WP(C) 2212/2019, this Court finds that the facts in this case and the facts in WP(C) 2212/2019 are not similar. In WP(C) 2212/2019, the registration of the Child Care Home run by the petitioner

therein had been cancelled. The Superintendent of the Child Care Home, who had been acquitted in the criminal case of sexual harassment of a child initiated against him, was no longer associated with the Child Care Home. However, in the present case, the Chairman of the petitioner organization, who has been acquitted in two criminal cases, continues to be the Chairman even till today. As such, the order dated 13.06.2022 passed in WP(C) 2212/2019 is not applicable to the facts of this case.

11. Consequently, the writ petition stands dismissed. However, the State respondents should take a decision on the petitioner's representation dated 21.01.2024, for registration of the petitioner organization as a Children Home and as a Specialized Adoption Agency as per their discretion, within a reasonable time.

JUDGE

Comparing Assistant