

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. No. 20444 OF 2011

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ORDER :

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This writ petition is filed challenging the impugned proceedings Memo No.B/DAMES/2011, dated 25.05.2011 issued by the 3rd respondent as illegal and arbitrary.

2. The facts which are necessary for disposal of the writ petition are that the deponent of the affidavit is Principal and Correspondent of the petitioner and he has been looking after the affairs of the Centre since 2005 and paying the standard committee fee and inspection fee to the respondents regularly without any complaints. There are about 320 students in different trades in the petitioner institution. While so, one Sri V.Rama Koti and four others who are interrelated and who have nothing to do with the petitioner institution tried to interfere with the activities of the petitioner. The deponent filed O.S.No.15 of 2011 on 12.05.2011 on the file of Principal Junior Civil Judge, Vizianagaram and also filed I.A.No.60 of 2011 seeking interim injunction restraining the defendants and their men and agents from ever interfering with the smooth running of the institution and from trespassing into the plaint schedule institution. That the defendants in the above suit, 4th respondent herein made an application to the 3rd respondent complaining about the deponent stating that he is in unauthorized occupation of the petitioner institution. In response to the same, the 3rd respondent issued notice to the deponent on 13.05.2011 asking him to appear before him for conducting enquiry. On 23.05.2011 the deponent appeared before the 3rd respondent and after hearing both sides, without considering material filed by the deponent, issued impugned proceedings instructing deponent to handover the institution to the DAME Society members, even though the suit filed by the

deponent is pending. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 3rd respondent stating that the petitioner institute and the 4th respondent have given representation to the office of the 3rd respondent and requested to handover the DAMES ITC which was registered as DAME Society along with related documents. That due to the dispute between the petitioner and the 4th respondent, the training programme in Government and private institutes of that region is hampered. That an enquiry was conducted by the 3rd respondent and after the same, the petitioner was instructed to handover the institute to the 4th respondent in the interest of the trainees, those who are undergoing training and lost training and to appear AITT Examination in July, 2011.

4. Counter affidavit is filed by the 4th respondent along with Vacate Petition No.3814 of 2011 denying the averments in the affidavit filed in support of the writ petition stating that his father-in-law along with others founded and registered society by name Dr. Ambedkar Memorial Educational Society at Vizianagaram on 25.01.1983 with registration No.3/1983 under the provisions of the Societies Registration Act with the objects of establishing educational institutions particularly in the field of technical education to provide employment to the weaker sections of the society. His father-in-law was the Secretary and Correspondent of the institution and running the affairs till his demise. Brother-in-law of the petitioner Sri K.Pratap Kumar became Secretary & Correspondent of the institution after the demise of his father-in-law on 25.12.1994 and himself as the President of the institution. That the petitioner, by taking advantage of the position after demise of his brother-in-law, occupied the institution without any authority and filed O.S.No.15 of 2011 on the file of the Principal Junior Civil Judge, Vizianagaram seeking permanent injunction against

himself and others. However, the said suit was dismissed on merits. Basing on the representation of this respondent, the 3rd respondent, after issuing notice to the writ petitioner and verifying the relevant documents, issued proceedings in Memo dated 25.05.2011 instructing him to handover the institution to the society founded by father-in-law of this respondent. That the petitioner is not a member of the society and has no connection of whatsoever with the society and the provisions under Section 23 of the Societies Registration Act has no application and that since the petitioner is stranger to the society and occupied the institution without any authority. The 3rd respondent issued impugned memo and that there is no illegality in issuing the same.

5. Heard Sri P.Durga Prasad, learned counsel for the petitioner, learned Government Pleader for Employment & Training as well as Sri V.R.Avula, learned counsel for the 4th respondent.

6. Learned counsel for the petitioner submits that initially suit is filed by the petitioner seeking injunction against 4th respondent and others in O.S.No.188 of 2011 and that the suit was dismissed vide judgment and decree dated 18.03.2013 and against the same A.S.No.58 of 2013 was filed and same was allowed on 26.02.2015 by granting injunction in favour of the petitioner by setting aside the judgment and decree of the trial Court. In view of the same, the 3rd respondent cannot direct the petitioner to hand over the petitioner institution to the 4th respondent and other parties in the appeal. He also contends that if there is any dispute with regard to the society, the 4th respondent has to approach under Section 23 of the A.P Societies Registration Act, 2001 (for short 'the Act of 2001'). The 3rd respondent cannot pass impugned orders without jurisdiction and not supported by any provision of law.

7. On the other hand, learned Assistant Government Pleader for

respondents 1 to 3 submits that in the interest of students, the impugned order has been passed.

8. Learned counsel for the 4th respondent submits that the deponent is not a member of the petitioner institution, through which the petitioner institution is being running, as such, the 4th respondent need not approach under Section 23 of the Act of 2001 and that the petitioner institution is running with unauthorized person, as such, impugned orders are passed. Since the petitioner is not appointed by the petitioner society, he has no *locus standi* to file the writ petition.

9. In the instant case on hand, no where it is stated by deponent of the affidavit that he is the member of the society, which is running the petitioner institution. A perusal of the writ affidavit shows that the deponent is Principal and Correspondent of the petitioner-institution, as such, when once he is not a member of the petitioner institution, the question of approaching under Section 23 of the Act of 2001 by the 4th respondent does not arise. Section 23 of the Act of 2001 reads as follows:

Section 23: Dispute regarding management:

In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.”

When the dispute arises between the member of the society and the society or if the dispute among the members of the society, it can be settled and agitated under Section 23 of the Act of 2001. It is not the case of the deponent that he is the member of the petitioner institution. Anyhow, the dispute appears to be between the petitioner and the 4th respondent and the impugned order does not refer to any provision of law under which the 3rd respondent exercised his power to

conduct enquiry and issued impugned proceedings directing the petitioner to hand over the same to the 4th respondent. Moreover, A.S.No.58 of 2013 has been filed against O.S.No.188 of 2011 and the same was allowed setting aside the judgment and decree dated 18.03.2013, granting injunction in favour of the petitioner granting liberty to the society to take action as per its bye-laws.

In view of the same, since the impugned order passed by the 3rd respondent is without jurisdiction and without reference to any provision of law, under which he exercised his jurisdiction and directed the petitioner to hand over the institute to the 4th respondent, the same is set aside as without jurisdiction. 3rd respondent cannot interfere with the dispute between the petitioner and the 4th respondent. However, this order will not preclude the concerned society which is running the petitioner institution to take appropriate action as per law in the matter. If there are any civil disputes between the parties, they have to workout their remedies in an appropriate forum. This order will also not preclude the authorities from taking appropriate action as per law in case of any violation committed by petitioner's institution.

Subject to the above observations, the writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

24.06.2015.
KVS

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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