

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29258 & 30333 OF 2013

COMMON ORDER :

As the issue involved in both the writ petitions is inter related, they are being disposed of by way of this Common Order.

2. W.P.No.29258 of 2013

This writ petition is filed seeking writ of mandamus declaring the Memo No.23445/E1/2006, dated 10.07.2013 issued by the 1st respondent- the Government of Andhra Pradesh, Health, Medical & Family Welfare (E) Department and consequential Notice Roc.No.A&E/77/Medical College/SVIMS/2005, dated 25.07.2013 issued by the 2nd respondent-Registrar of SVIMS and consequential letter No.23445/E1/2006, dated 17.09.2013 issued by the 1st respondent as illegal and arbitrary.

3. It is the case of the petitioner that the 2nd respondent i.e., Sri Venkateswara Institute of Medical Sciences (hereinafter referred to as 'SVIMS') is a Super Speciality Hospital established by the Tirumala Tirupati Devasthanams (for short 'TTD') in the year 1993 and registered as a society under the Societies Registration Act, 1860 and subsequently it became Sri Venkateswara Institute of Medical Sciences University by the Act No.12 of 1995 with effect from 08.09.1994. The 2nd respondent-SVIMS Academic senate passed a resolution dated 11.04.2005 to establish a Medical College. The District Collector, Chittoor,

in turn by proceedings dated 25.10.2005 and 22.02.2006 directed the Tahsildar, Renigunta to deliver advance possession of Acs.60.66 cents and Ac.90.79 cents to the Director, SVIMS for establishment of Medical College. As the TTDs and SVIMS were not willing to fund the project, they both approached and succeeded in pursuing the Peetathipati of Sri Kanchi Kamakoti Peetam, Kancheepuram, Tamil Nadu State, which had established a Medical College at Kancheepuram, to participate in the project and establish the Medical College and Hospital in the land already allotted to SVIMS by the Government of Andhra Pradesh. In pursuant to the same, the said proposal was accepted by the Executive Board of the SVIMS in its meeting held on 15.09.2006 and Memorandum of Understanding dated 18.01.2007 was executed by and between the petitioner and SVIMS with certain conditions. As per the said MoU, an irrevocable Trust called Sri Kanchi Kamakoti Peetam & Sri Venkateswara Institute of Medical Sciences health, Medical Education and Research Foundation, the petitioner herein was formed and the deed of declaration of the Foundation was executed and registered on 29.01.2007.

4. Subsequently, the Government of Andhra Pradesh vide G.O.Ms.No.1404, Revenue (Assn.IV) Department, dated 03.11.2007 ordered the District Collector, Chittoor to alienate the Government land to an extent of Acs.60.00 in favour of the petitioner-Trust. Memorandum of Understanding dated 18.01.2007 was executed by and between the petitioner and SVIMS University on payment of market value of Rs.75,000/-

per acre duly ratifying the action of the Collector, Chittoor, in having handed over advance possession of the lands to the petitioner and SVIMS. Accordingly, the District Collector issued proceedings dated 04.12.2007 directing the Tahsildar to carry out necessary changes incorporating the names of the petitioner and SVIMS in the Village and Mandal accounts and report compliance. On a representation of the petitioner, the Government of A.P in modification of the order issued in G.O.Ms.No.1404, dated 03.11.2007, passed an order in G.O.Ms.No.1029, Revenue (Assn.IV) Department, dated 14.08.2008 stating that the alienation of 60 acres be free of cost to the petitioner as the MoU dated 18.01.2007 entered into with the approval of the Health, Medical and Family Welfare Department provided for transfer of Acs.60.00 free of cost to the Trust. In pursuant to G.O.Ms.No.1029, dated 14.08.2008, the 1st respondent requested the Collector, Chittoor District, to hand over the physical possession of 60 acres of land free of cost to the petitioner for establishing Padmavathi Medical College and Hospital.

5. On 31.07.2010, the 1st respondent informed the Director, SVIMS about the letter dated 24.04.2010 that the medical college shall be under Public Private Partnership mode and in the event of the Trust being unable to run the medical college or close down and the medical college and attached hospital shall stand transferred to SVIMS. Accordingly, the said revised MoU was signed by both parties on 11.08.2010 in the place of earlier MoU dated 18.01.2007 and same was furnished to the

Government. Subsequently the Tahsildar, Renigunta Mandal after having inspected both blocks of 60 acres of land to be exchanged between the parties, gave a detailed report to the District Collector on 10.12.2010. Basing on the District Collector's report as well as the report of the Chief Commissioner of Land Administration, Government of A.P dated 25.11.2010, the State Government in G.O.Ms.No.116, Revenue Department dated 14.02.2011 accorded permission to the District Collector, Chittoor for the exchange of 60 acres of land of Kurukalva and Kothapalem villages between the petitioner and the 2nd respondent in various Survey numbers as mentioned in the G.O. On the same day, the District Collector, Chittoor issued separate proceedings directing the Tahsildar, Renigunta Mandal to take further action to incorporate necessary changes in the village accounts regarding the exchange of lands between the parties. However, the said changes have not been made by the Tahsildar, Renigunta Mandal. The petitioner had completed the construction of the buildings for the medical college and a 300 bedded teaching hospital is functioning since 2012 in the land and petitioner had also recruited the faculty after due advertisement dated 24.11.2012 and that the petitioner had so far expended over Rs.118 crores on the project by taking loans from the Nationalized Banks. As the Tahsildar, Renigunta Mandal failed to incorporate the name of the petitioner in the village revenue records and as the MCI was insisting for a certificate from the Tahsildar in that regard, petitioner filed WP No.16911 of 2013.

This Court, by order dated 24.06.2013 in WPMP No.20510 of 2013 in WP No.16911 of 2013, directed the Tahsildar, Renigunta Mandal, 3rd respondent therein to consider the petitioner's request for causing necessary entries in the Record of Rights and pass orders in accordance with law within two weeks from the date of receipt of a copy of the order. However, without implementing the said direction, the Tahsildar, filed counter affidavit and vacate stay petition on 02.07.2013. This Court, by order dated 26.07.2013, allowed the writ petition and the Tahsildar, Renigunta was directed to forthwith mutate the name of the petitioner trust in the record of rights in respect of various extents of land in different survey numbers mentioned in the prayer of the writ petition and communicate the same to the petitioner trust within a period of one week from the date of receipt of the order. Aggrieved by the said order, the respondents therein filed WA No.1532 of 2013. On 04.09.2013, the said writ appeal was admitted and WAMP No.3063 of 2013 filed for suspending the order in WP No.16911 of 2013 was dismissed.

6. After passing interim order dated 24.06.2013 in WPMP No.20510 of 2013 in WP No.16911 of 2013 and vacate petition was filed on 02.07.2013, the 1st respondent passed an order in Memo No.23445/E1/2006, dated 10.07.2013 according permission to the Executive Director, TTDs, the Director, SVIMS and the Collector, Chittoor; a) to annul the MoU dated 11.08.2010 entered into between petitioner and SVIMS by invoking clauses 15 & 16 of the Memorandum of Understanding;

b) to take over the possession/ownership of the lands and buildings to start the proposed Sri Padmavathi Medical College for women with an intake of 100 seats apart from other directions, as directed the Government of Andhra Pradesh. The Registrar of SVIMS sent notice dated 25.07.2013 to the petitioner canceling the MoU dated 11.08.2010. Though the petitioner sent reply dated 09.08.2013 to the notice objecting to it, the 2nd respondent sent a letter dated 31.08.2013 stating that notice dated 25.08.2013 was communicated as per the instructions of the Government and that letter dated 31.08.2013 cannot be taken into consideration. Consequent upon the Government Memo dated 10.07.2013 and notice dated 25.07.2013 of the 2nd respondent, the 1st respondent sent letter No.23445/E1/2006, dated 17.09.2013 canceling the essentiality certificate dated 27.11.2010 issued to the petitioner for the establishment of the medical college. Aggrieved by the same, present writ petition is filed.

7. **W.P.No.30333 of 2013**

Apart from reiterating the similar averments as that of the affidavit in the above writ petition, it is the case of the petitioner that the Government-1st respondent vide G.O.Ms.No.531, dated 03.10.2013 has cancelled the allotment of 60 acres of land allotted to the petitioner for the establishment of the medical college without any valid reason. Moreover, the Government-1st respondent before issuing the impugned G.O, has not considered the show-cause notice dated 06.08.2013 issued by it to the petitioner and also the explanation of the petitioner dated

14.08.2013, which was directly submitted at the office of the 1st respondent, though it was received and acknowledged on 16.08.2013 and there is no reference at all in the impugned G.O, which is in violation of principles of natural justice.

8. Common Counter affidavit is filed by the 1st respondent denying some of the averments in the affidavit filed in support of the writ petition stating that the writ petition is not maintainable under Article 226 of the Constitution of India when there is alternative remedy available to the petitioner under law. There are serious disputed questions of fact and law involved in this writ petition, which can only be decided by a competent Civil Court and not by this Court under writ jurisdiction. It is stated that as the conditions of MoU dated 11.08.2010 are violated, the same was cancelled. Since the dispute in this writ petition is between the petitioner and the 2nd respondent is contractual in nature, the petitioner has to approach the Civil Court, under Specific Relief Act, as such, the writ petition is not maintainable. It is stated that Sri Siva Sambu, Registrar of Sri Jayendra Saraswathi University, on behalf of Kanchi Kamakoti Peetam came forward to establish the medical college jointly with SVIMS and put forward the proposal before the Hon'ble Minister for Health, Medical and Family Welfare. The Executive Board of SVIMS in its meeting held on 15.09.2006 resolved to construct Sri Padmavathi Medical College in collaboration with Kanchi Kamakoti Peetam as Public Private Partnership mode and that if the proposal is not materialized for any legal implications, the construction of medical college and hospital buildings, will be

considered by Kanchi Kamakoti Peetam as donation. As per the MoU, the signature to the said MoU on behalf of the SKKP was Sri S.Sivasambu, S/o.Sri S.Sadasivam as its representative. However, though there was no direct involvement of SKKP in the medical college project some third party namely Sri K.V.Ranganathan S/o.K.R.Venkatachalam, R/o.Tirupathi, without disclosing his connection or relationship with SKKP, was designated as Settler/Founder of the Trust and was made to execute the Trust Deed on 29.01.2007. The petitioner is trying to avoid the establishment of project under PPP mode and violating the MoU conditions. There is no loss of two academic years i.e., 2011-12 and 2012-13 as the petitioner made application by its Managing Trustee to the MCI on 29.09.2011 and also letter addressed to the District Collector, Chittoor on 09.08.2012 for mutation of land and that the petitioner paid government value of the land to the Government treasury unauthorizedly on 27.08.2012 and 03.09.2012, though the subject land is alienated to the Trust free of cost. More over, the land cost was paid in the name of M.Jothi Prakasam, Founder & Chairman, M/s.Sapthagiri Educational Trust (Sairam Educational Institutions), T.Nagar, Chennai-17, but not in the name of SKKP Trust. It is stated that the MCI in their letter dated 06.01.2012 raised many objections, including non-furnishing of revenue details of the hospital, audit statement of accounts, availability of sources of funds etc., which is nothing but incompetence of the Trust to establish the Medical College. Moreover, the petitioner also paid the government value of the

lands i.e., for Acs.91.45 cents) allotted to SVIMS for construction of University buildings into Government treasury in the name of his own Trust, with unaccounted money. The petitioner has not fulfilled the other conditions stipulated by the MCI in its letter dated 06.01.2012. As such, the allegation of delay in establishment of college is on account of the failure of the revenue authority to effect mutations in revenue records is untenable. It is stated that the day to day developments of the Trust like inspection of the buildings by the MCI officials, construction of buildings etc., were not informed to the Director, SVIMS being the Ex-officio trustee either through Trust meeting or in the form of correspondence and that the petitioner is to put to strict proof of the expenditure of Rs.118 crores towards development of the medical college. As the petitioner has violated the terms and conditions of the MoU dated 11.08.2010, the same was cancelled by way of impugned proceedings dated 10.07.2013 by the 1st respondent. The petitioner is trying to establish private medical college, though it was proposed to establish a medical college under Public Private Partnership mode. A show-cause notice was issued to the Trust vide Memo No.16443/Assn.IV(2)/2013, dated 06.08.2013 wherein the Government of A.P contemplated to resume the land assigned to the Trust. Under B.S.O 24, the Government can resume the land wholly or in part with any building thereon in the event of infringement of any conditions of the grants. It is stated that the Registrar, SVIMS in the notice dated 25.07.2013 communicated the orders of the Government annulling the MoU

dated 11.08.2010 on valid reasons, as the petitioner has violated the clauses 15 and 16 of the MoU. Moreover, the Government has every right and jurisdiction to issue instructions to the 2nd respondent to annul the MoU to protect the Government land, which is worth Rs.200 crores in the open market. Since the MoU dated 18.01.2007 stands cancelled after revised MoU was executed on 11.08.2010, there is no validity for clauses 11 and 13 of the MoU dated 18.01.2007 as claimed by the petitioner. It is stated that the cancellation of essentiality certificate is after due consideration of various facts mentioned in Government Memo dated 10.07.2013. The memo and the letter of the 1st respondent dated 10.07.2013 and 17.09.2013 are lawful and sustainable. The Government is prepared to reimburse the amount back to SKKP, which was invested for construction of the building etc. and prayed to dismiss the writ petition.

9. Reply affidavit is filed by the petitioner denying the averments in the common counter affidavit filed by the respondents stating that there is no contract entered into by the State Government with the petitioner. Respondents alone approached Sri Kanchi Kamakoti Peetam and requested to participate in the proposed Padmavathi Medical College. There is no violation of conditions of MoU dated 11.08.2010. Delay in establishment of the medical college is certainly on account of the revenue authority's failure to effect mutation in revenue records. Non-mutation of the name of the petitioner Trust in the revenue records to the 60 acres of land allotted to the petitioner is a major impediment to complete the MCI inspection

and to get approval from the Government of India. There is no need to disclose the accounts of the Trust in respect of the infrastructure development or the amount deposited into the Government treasury to the ex-officio members. Neither the State Government nor the SVIMS had invested any money and the entire cost of both capital and recurring expenditure should be met only by the petitioner, as such, the petitioner had mobilized from its own sources and also by obtaining loans from the Nationalized Bank.

10. Heard Sri D.Prakash Reddy, learned Senior Counsel for the petitioner, learned Government Pleader for Medical & Health, learned Government Pleader for Revenue (Assignment).

11. Sri D.Prakash Reddy, learned Senior Counsel submits that the impugned Memo No.23445/E1/2006, dated 10.07.2013 according permission to the Executive Officer, T.T.D and Director, SVIMS-2nd respondent and District Collector, Chittoor to annul the Memorandum of Understanding dated 11.08.2010 between the petitioner and the 2nd respondent, the notice vide proceedings Roc.No.A&E/77/Medical College/SVIMS/2005, dated 25.07.2013 cancelling MoU dated 11.08.2010 by the 2nd respondent and cancellation of essentiality certificate is without any notice to the petitioner, as such, the same is in violation of principles of natural justice and that the writ petition is liable to be allowed on this sole ground. He further submits that there is no rebuttal for the assertion of the petitioner when the aforesaid plea is taken in the writ petition and more over the same is not disputed either by the respondents in their counter nor by the

learned Government Pleader for Medical and Health. He further submits that as per clause 12 of the MoU dated 11.08.2010, the Government of A.P shall not interfere with the management of the institution and shall not take any decision unilaterally. He also submits that the reason for cancellation of MoU dated 11.08.2010 is for violation of clauses 15 and 16 of MoU dated 11.08.2010 is without any application of mind as the said stage has not reached by the petitioner. He also submits that the representation of the petitioner dated 09.08.2013 is in pursuant to the impugned letter dated 25.07.2013 issued by the 2nd respondent, which is not properly considered by the 2nd respondent. Without considering the representation of the petitioner dated 09.08.2013, the 2nd respondent has addressed another letter 31.08.2013 reiterating the annulment of the MoU dated 11.08.2010. He also submits that consequential impugned proceedings in W.P.No.30333 of 2013 in cancelling the allotment of land in favour of the petitioner is also without any application of mind and in violation of principles of natural justice. He submits that though show-cause notice is issued and petitioner filed explanation dated 06.08.2013, without considering the same, the impugned proceedings dated 03.10.2013 cancelling allotment of land has been issued, which is in violation of the principles of natural justice. He would further contend that having allotted the land to the petitioner for establishment of medical college and after taking amount from the petitioner and after completion of the building construction, the impugned G.Os should not have been issued, as such, the

respondents are estopped from issuing the impugned proceedings of cancellation i.e., the MoU dated 11.08.2010, cancelling the Essentiality Certificate and also cancelling the allotment of land made in favour of the petitioner. He would further contend that the Government has concurred for entering into MoU dated 11.08.2010 with the Patron, His Holiness Sri Sankaracharya of Sri Kanchi Kamakoti Peetam has accepted, after much persuasion, for establishment of the proposed Medical Institution-Sri Padmavathy Medical College at Tirupati-under the Public Private Participation in good faith and with good intentions after an assurance-in person by then Honourable Minister of Finance, Health & Family Welfare of Andhra Pradesh State and First Vice Chairman, Governing Council of Sri Venkateswara Institute of Medical Sciences (SVIMS), Tirupati. In support of his contentions, he relied on the judgments reported in **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others¹**, **ABL International Ltd., and another v. Export Credit Guarantee Corporation of India Ltd and others²**, **Mahabir Auto Stores and others v. Indian Oil Corporation and others³**, **M/s.Motilal Padampat Sugar Mills Co. Ltd., v. State of Uttar Pradesh and others⁴** and **Century Spinning and Manufacturing Company Ltd., and another v. The Ulhasnagar Municipal Council and another⁵**.

12. On the other hand, learned Government Pleader for Medical and Health appearing for 1st respondent submits that

¹ (2015) 8 Supreme Court Cases 519

² (2004) 3 Supreme Court Cases 553

³ AIR 1990 Supreme Court 1031 (1)

⁴ (1979) 2 Supreme Court Cases 409

⁵ 1970 (1) Supreme Court Cases 582

the impugned letter dated 10.07.2013 is only an internal communication issued by the Government of A.P to the 2nd respondent for taking necessary action and that it is only an interdepartmental communication addressed to TTD and 2nd respondent and also to District Collector, Chittoor District as such, petitioner is not required to be put on notice. He also contends that the letter dated 25.07.2013 annulling the MoU dated 11.08.2010 is not challenged in the writ petition. He also contends that the MoU is between the petitioner and the 2nd respondent. He submits that the MoU dated 11.08.2010 is cancelled vide proceedings dated 25.07.2013 by the 2nd respondent as the petitioner violated conditions of the MoU and consequently, Essentiality Certificate issued was also cancelled by proceedings dated 17.09.2013, as such, no interference is called for. He would further contend that the petitioner has to avail common law remedy before the competent Civil Court.

13. Learned Government Pleader for Revenue (Assignment) would contend that before issuing impugned G.O.Ms.No.531, dated 03.10.2013, cancelling the land allotted to the petitioner, show-cause notice dated 06.08.2010 was issued to the petitioner. Since the petitioner has violated the terms and conditions of the allotment, same was cancelled. He contends that the allotment of land to the petitioner was free of cost since it is a Trust, but the petitioner unauthorizedly deposited the amount in the Government Treasury. He further contends that allotment of land was cancelled in view of violation of B.S.O. 24

and also violation of conditions mentioned in MoU dated 11.08.2010, as the land was not properly utilised.

14. It is not in dispute that the State Government permitted the petitioner-Trust to come into existence as a joint venture in order to start a medical college. Though the Government, initially has alienated the land on market value, but in modification of G.O.Ms.No.1404, dated 03.11.2007, has issued G.O.Ms.No.1029, dated 14.08.2008, allotted the land free of cost in favour of the petitioner-Trust. The allegation that the petitioner-Trust deposited Rs.45 lakhs towards cost of the land with the Government Treasury is not of much importance when once the Government has allotted land to the petitioner-Trust. Payment of amounts to the Government towards land cost is not prejudicial to the interests of the Government as alleged. The petitioner paid an amount of Rs.8.00 crore to the SVIMS towards payment of the cost of the unfinished structures on 15.09.2010 and Rs.4,93,12,000/- was also paid on 30.01.2012. The petitioner had also paid an amount of Rs.45.00 lakhs to the Government by Treasury Challan dated 27.08.2012 towards the market value @ Rs.75,000/- per acre as fixed by the Government for the entire 60 acres that were delivered to the petitioner by the SVIMS, though it was on free of cost. This Court, in interim order dated 23.10.2013 in W.P. No.30333 of 2013 observed as follows:

“Learned Advocate General takes notice for the respondents and seeks three weeks’ time for filing counter-affidavit.

A perusal of the record shows that the impugned order of cancellation of alienation of land made to the petitioner is a sequel to the cancellation of Memorandum of Understanding (MoU) and

Essentiality Certificate, questioning which, the petitioner has filed Writ Petition No.29258 of 2013. My learned Brother Nooty Ramamohana Rao, J while ordering notice in the said Writ Petition, passed the following order on 10.10.2013:-

“When the matter is taken up for consideration today, on behalf of the 2nd respondent, the learned Additional Advocate General Sri K.G.Krishna Murthy, has accepted notice. He would submit that the 2nd respondent will not enter into any Memorandum of Understanding (MoU) with any other individual or Trust or Institution concerning the Medical College to be established at Tiruchanur, which is the subject matter of the main *lis* in this Writ Petition. He seeks four weeks time for filing a detailed counter-affidavit in the matter.

Registry is directed to list this matter for consideration on 21.11.2013 making it clear that the 2nd respondent, as per the undertaking furnished now, shall not enter into any MoU concerning establishment of the Medical College in question.”

By the order in this Writ Petition, respondent No.1 has cancelled the alienation of land made to the petitioner for establishment of a Medical College and hospital.

As the order impugned in the present Writ Petition is a sequel to the orders impugned in Writ Petition No.29258 of 2013, it is appropriate that both these Writ Petitions are heard by the same Court.

The Registry shall, accordingly, do the needful after obtaining the order from the Hon'ble the Chief Justice.

It is not in dispute that in pursuance of the MoU, the petitioner has established a 300 bed hospital and the same is stated to be presently running. Therefore, the elements of balance of convenience and irreparable injury lie in directing maintenance of status quo with respect to the physical possession of the property, pending further orders. There shall be, accordingly, an order to that effect.”

15. Though the respondents has raised several aspects with regard to the integrity of members of the petitioner-Trust, the way they funded for construction of the building, non intimation of the day to day affairs of the petitioner-Trust either to the Government of A.P, Executive Officer, TTDs and to the Director of SVIMS. But *prima facie* the fact remains from the averments in the affidavit of the writ petitions that the petitioner has not been given any opportunity of hearing by issuing any notice

before passing impugned proceedings in W.P.No.29258 of 2013 remains unrebutted.

16. A perusal of the impugned proceedings dated 25.07.2013 though it is styled as 'Notice', its contents at the operative portion reads as follows:

"....Subsequently vide Memo No.23445/E1/2006 dated 10.07.2013 the Principal Secretary to Government HM & FW (E) Department taking into consideration the emerging scenario has advised Director SVIMS to annul the MoU dated 11.08.2010 entered into between SKKP and SVIMS by invoking clause 15 and 16 of MOU which provide that the medical college be established as public private partnership mode and that in the event of Trust being unable to run the medical college or closed down the medical college and its attached hospital stand transferred to SVIMS. It has been proposed by the Government to start Sri Padmavathi medical College for women with intake of 100 seats by taking possession of the land and buildings. As per the advice of the Government steps are being taken towards reimbursement of expenditure incurred by the Trust in construction of buildings and such other incidental expenses and the District collector, Chittoor has been directed to take appropriate action if the amount deposited by the Trust towards market value of 150 acres of land is reclaimed by the Trust. Hence under the circumstances of the case I am hereby annulling the MoU dated 11.08.2010 on account of mismanagement of the trust by the managing trustee and other trustees nominated by Patron of the Trust to have wrongful gain and for totally discarding the purpose and intention behind entering into MoU for establishment of medical college under private public partnership mode which is the corner stone of the agreement and acting arbitrarily and unilaterally with consultations or deliberations with the Ex-officio trustees with regard to the matters of Trust and such other breach of obligations on the part of executive trustees."

The tenor of the said notice goes to show that the MoU dated 11.08.2010, entered into between the petitioner and the 2nd respondent, has been cancelled without giving any notice to the petitioner. It is not in dispute that the above said notice has been issued to the petitioner-Trust in pursuance to the Memo No.23445/E1/2006, dated 10.07.2013, issued by the Principal Secretary to the Government, HM & FW (E) Department. In either of the proceedings i.e., dated 10.07.2013 of the Principal

Secretary to Government and 25.07.2013 of Registrar of 2nd respondent, the petitioner-Trust was not put on notice and no opportunity was provided to the petitioner-Trust to rebut the allegations made against it, which is nothing but violation of principles of natural justice. It is pertinent to note that before passing the impugned proceedings dated 25.07.2013 and also before cancelling the Essentiality Certificate granted to the petitioner earlier, a notice of such intention should have been issued to the petitioner. As far as cancellation of Essentiality Certificate by proceedings dated 17.09.2013 is concerned, the said certificate was granted by proceedings 07.09.2009 and 27.11.2010 by the Government. In the counter affidavit, there is no whisper about issuing any notice to the petitioner before cancelling the MoU dated 11.08.2010 and also cancelling the Essentiality Certificate.

17. It is mainly argued by the learned Government Pleader for Medical and Health that the petitioner has contravened the clauses 12, 15 and 16 of the MoU, dated 11.08.2010, as such, the respondents are constrained to cancel the MoU, consequently Essentiality Certificate granted to the petitioner and finally they have cancelled the allotment of land made in favour of the petitioner-Trust.

Clauses 12, 15 and 16 of the MoU dated 11.08.2010 reads as follows:

“12. The Patron. His Holiness of Sri Kanchi Kamakoti Peetam is accepting, after much persuasion, the establishment of the proposed Medical Institution-Sri Padmavathy Medical College, at Tirupati-under the Private-Public Participation in good faith and with good intentions after an assurance-in-person by the

Honourable Minister of Finance, Health & Family Welfare of Andhra Pradesh State and First Vice Chairman, Governing Council of Sri Venkateswara Institute of Medical Sciences (SVIMS), Tirupati, that the Government of Andhra Pradesh shall not interfere in the Management of this institution and shall not take any decisions unilaterally in future, that affects the revenue/income of the institution.

15. This Medical College shall be established under public-private partnership mode.

16. In the event of Trust being unable to run the Medical College, or closed down, the Medical College and its attached Hospital shall stand transferred to SVIMS.”

Though it is alleged in the common counter affidavit filed by the Principal Secretary that the impugned Memo dated 10.07.2013 does not offend the principles of natural justice as the Managing Trustee of the petitioner-Trust deviated the conditions of MoU, but no opportunity of hearing was given to the petitioner by issuing any prior notice before passing the impugned proceedings dated 10.07.2013, 25.07.2013 and 17.09.2013. As far as the violations of the clauses 15 and 16 of the said MoU are concerned, I am in agreement with the contention of the learned Senior Counsel for the petitioner that the stage has not arisen at all for the violation of the said clauses. Though it is alleged in the counter that the petitioner-Trust has invested unaccounted money from private persons, no opportunity was given to the petitioner to rebut the said allegations. Both the proceedings dated 10.07.2013 and 25.07.2013 are issued levelling allegations against the petitioner, without issuing notice to the petitioners. The fact of non issuance of any notice before issuing the impugned proceedings was not at all denied in the counter and nothing

was brought to the notice of this Court that the same were issued after issuing prior notice.

Prima facie, the stage for invoking clause 15 and 16 of MoU dated 11.08.2010 has not arisen at all and if there is any violation of clause 15, the petitioner could have put on notice. It is to be noted that the Medical College is yet to be started, the question of violation of clause 15 at this stage does not arise at all. If any violation of clause 15 of the MoU, it can be only after establishment of medical college. When the allotment of land was cancelled, the petitioner could not have established medical college and permission by MCI was also not granted, as such, the question of violation of clauses 15 and 16 does not arise at all.

18. Though it is alleged in the counter affidavit that show-cause notice is issued before issuance of impugned G.O.Ms.No.531, Revenue (Assignment) Department dated 03.10.2013, but there is no reference to the same in the said G.O. The said G.O is mainly issued on the ground of cancellation of MOU dated 11.08.2010 on 31.08.2013 and also refers to letters dated 17.09.2013, which is issued for cancellation of Essentiality Certificate. Moreover, though the petitioner submitted explanation dated 14.08.2013 to the show-cause notice dated 06.08.2013, the same has not been considered. In view of the same, cancellation of allotment of land is also in violation of principles of natural justice.

19. In **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati (supra)**, the Hon'ble Supreme Court held as follows:

“33. In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:

“61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice.”

34. Likewise, in **C.B. Gautam v. Union of India & Ors.**¹², this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that:

“30..... The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that before such an imputation can be made against the parties concerned they must be given an opportunity to show-cause that the under valuation in the agreement for sale was not with a view to evade tax.”

It is, therefore, all the more necessary that an opportunity of hearing is provided.

35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in **A.K. Kraipak's** case (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In **Maneka Gandhi v. Union of India & Anr.**¹³ also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the notice is required. In **Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills & Anr.**¹⁴, this aspect was explained in the following manner:

“3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse,

because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case.”

36) In ***East India Commercial Company Ltd., Calcutta & Anr. v. The Collector of Customs, Calcutta***¹⁵, this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated....”

In view of law laid down by the Hon’ble Supreme Court in the aforesaid judgment, the cancellation of the MoU dated 11.08.2010 and also essentiality certificate, without issuing any notice, is in utter disregard of principles of natural justice and also in violation of clause 12 of MoU, dated 11.08.2010.

20. Learned Government Pleader for Medical and Health submitted that the writ petition is not maintainable since the petitioner-Trust entered into contract with the 2nd respondent is in contractual nature, as such, the petitioner-Trust is required to avail remedy under Section 14(1)(a) of the Specific Relief Act. I am afraid, I am unable to agree with the said contention. In ***ABL International Ltd., and another v. Export Credit Guarantee Corporation of India Ltd (supra)***, the Hon’ble Supreme Court held as follows:

“8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below one of the questions that falls for our consideration is whether a writ petition under [Article 226](#) of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.

9. In our opinion this question is no more res integra and is settled by a large number of judicial pronouncements of this Court. In *K.N. Guruswamy Vs. The State of Mysore and others.* [1955 (1) SCR 305] this Court held:

"20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a

right under the laws of the State to receive the same treatment and be given the same chance as anybody else....

We would therefore in the ordinary course have given the appellant the writ he seeks. But owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go. ... A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law."

10. It is clear from the above observations of this Court in the said case though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under [Article 226](#) of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy Vs. The State of Mysore and others was followed subsequently by this Court in the case of The D.F.O, South Kheri & Ors. Vs. Ram Sanahi Singh [1971 (3) SCC 864] wherein this Court held:

"By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy's case (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

11. In the case of Gujarat State Financial Corporation Vs M/s. Lotus Hotels Pvt. Ltd. [1983 (3) SCC 379] this Court following an earlier judgment in R.D. Shetty Vs. International Airport Authority of India [1979 (3) SCC 489] held:

"The instrumentality of the State which would be 'other authority' under [Article 12](#) cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise and put itself in a disadvantageous position. The appellant Corporation, created under the [State Financial Corporation Act](#), falls within the expression of 'other authority' in [Article 12](#) and if it backs out from such a promise, it cannot be said that the only remedy for the aggrieved party would be suing for damages for breach and that it could not compel the Corporation for specific performance of the contract under [Article 226](#)."

In view of the aforesaid principle of law laid down by the Hon'ble Supreme Court, the contention of the learned Government Pleader for Medical and Health that the petitioner-Trust has to avail alternative remedy of filing suit for specific performance of contract cannot be accepted.

21. In **Mahabir Auto Stores and others v. Indian Oil Corporation (supra)**, the Hon'ble Supreme Court held that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. It is also held that where there is arbitrariness in State action of this type, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. Therefore, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even, in the matters of entering or not entering into contracts, fails to satisfy the test of reasoned ableness, the same would be unreasonable. In the present case on hand, the Government, being the executive of the State, has entered into contract with the petitioner-Trust and admittedly, land has been allotted to it. When the Government intends to cancel the said allotment, it can do so by giving reasonable opportunity to the petitioner-Trust for cancelling such allotment made in favour of the petitioner-Trust, by furnishing valid reasons, otherwise not. Therefore, the impugned proceedings i.e., 10.07.2013 and 25.07.2013 are liable to be cancelled.

22. Be that as it may, when the respondent authorities are not mutating the name of the petitioner-Trust in the revenue

records, the petitioner-Trust filed W.P.No.16911 of 2013. It is pertinent to note that this Court passed interim order dated 24.06.2013 and vacate petition was filed by the respondents therein on 02.07.2013. However, the 1st respondent unilaterally passed impugned Memo No.23445/E1/2006, dated 10.07.2013, according permission to the Executive Officer, TTDs, the Director, SVIMS and the Collector, Chittoor to annul the MoU dated 11.08.2010 and to take further action in the matter. This Court, by judgment dated 26.07.2013 allowed the writ petition observing as follows:

“That learned Additional Advocate-General has placed certain material before the Court at the hearing and submitted that the State Government has decided to cancel the MOU and that a letter was addressed to that effect to the Executive Officer, Tirumala Tirupati Devasthanams, the Director of SVIMS and respondent No.2-District Collector, Chittoor. In my opinion, this subsequent event has no bearing on the issue raised in this Writ Petition. So long as the MOU and the allotment of the land are not cancelled, respondent No.3 cannot refuse mutation in favour of the petitioner.

For the above mentioned reasons, the Writ Petition is allowed. Respondent No.3 is directed to forthwith mutate the name of the petitioner-Trust in the ROR in respect of the various extents of lands in different survey numbers mentioned in the prayer of the Writ Petition and communicate the same to the petitioner-Trust within a period of one week from the date of receipt of this order.”

Against the orders in the writ petition, the respondents-State Government preferred Writ Appeal i.e., W.A.No.1532 of 2013. While admitting the aforesaid Writ Appeal, the Hon’ble Division Bench has dismissed WAMP No.3063 of 2013 which was filed for interim suspension of the Judgment dated 26.07.2013 in WP No.16911 of 2013 by observing as follows:

“While considering the matter for grant of interim order, we have heard the learned counsel at length.

The issue before us is whether the respondent/writ petitioner has acquired any right or title or interest in the land in question so much so that he is entitled to get mutation. The basic point raised

before the learned Single judge was that the respondent/writ petitioner did not acquire any interest in the land, as the instrument, purporting to create the interest, was not registered, which shall compulsorily be registered. In this context, we have read the order of the learned Single Judge, who have found on fact as follows:

“The uncontroverted facts are that the State Government permitted the petitioner – Trust to come into existence as a joint venture with a view to start a medical college. Initially, the Government has alienated the land on market value. Subsequently, by G.O.Ms.No.1029, dated 14.08.2008, modified G.O.Ms.No.1404, dated 03.11.2007, and allotted the land free of cost in favour of the petitioner-Trust. It is a different matter that the petitioner-Trust has chosen to pay a sum of Rs.45 lakhs in pursuance of G.O.ms.No.1404, dated 03.11.2007. From the above facts, it is clearly discernible that the State Government has made a grant to the petitioner-Trust for establishment of a medical college.”

When this is the factual finding, prima facie, the only thing to be considered is whether the document requires to be compulsorily registered or not, so much so, to enable the respondent/writ petitioner to get mutation.

The learned Single Judge, in our prima facie view, has correctly concluded in law that the aforesaid nature of the instrument does not require any registration, as it falls within the purview of clause (vii) of sub-section (2) of Section 17 of the Registration Act, 1908, which reads as follows:

“Any grant of immovable property by the Government”.

It is contended by the learned Additional Advocate General appearing for the appellants that in view of Section 4 of the Rights in Land and Pattadar pass Books Act, 1971, the aforesaid document is required to be registered.

We are of the prima facie view that Section 4 of the said Act has no application to the issue involved here. However, we make it clear that in the event the appellants decide to mutate the name of the respondent/writ petitioner pending disposal of the appeal, this will abide by the result of the appeal and the consequential order, meaning thereby, if the appeal is allowed the mutation will be cancelled, the name of the respondent/writ petitioner will be deleted and no right will be created in its favour.

Having regard to the balance of convenience, the learned Single Judge initially passed the mandatory interim order of mutation in favour of the respondent/writ petitioner and the same was not assailed. Further, when the interim order was sought to be vacated, the writ petition was decided on merits.

In any view of the matter, if the mutation is effected, the appellants do not suffer in any manner whatsoever. Whereas, if the interim order is granted, the respondent/writ petitioner will suffer irreparable loss which cannot be compensated in terms of money”.

In view of the above facts and circumstances, the impugned proceedings dated 10.07.2013, 25.07.2013 and consequential cancellation of Essentiality Certificate dated 17.09.2013, are

liable to be set aside and accordingly set aside. Impugned G.O.Ms.No.531 dated 03.10.2013 cancelling allotment of land is consequential to proceedings dated 25.07.2013 and 17.09.2013 and passed without reference to issuance of any show-cause notice, as such, the same is also set aside.

Accordingly, both the writ petitions are allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall stands closed.

19.09.2016.
kvs



A.RAJASHEKER REDDY, J

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.29258 & 30333 OF 2013



Date: 19.09.2016

kvs

