

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.9754 of 2008

ORDER:

This Writ Petition has been filed by the petitioner assailing the order dt.11-04-2008 of the 2nd respondent.

2. The petitioner is a Society allegedly established in 1882 and registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli vide registration No.1562/1984 dt.12-10-1984, According to the petitioner, the Minorities Welfare Department through proceedings dt.10-12-2007 granted minority status to the aided schools established by the petitioner Society for the academic years 2007-2008 to 2009-2010.

3. Petitioner contends that the 3rd respondent is also a Society bearing the name identical to that of the petitioner, which had been registered under the Andhra Pradesh Societies Registration Act, 2001 (for short "the Act") by the 2nd respondent vide registration No.485/2006 dt.28-03-2006 and that the registration of 3rd respondent is contrary to Section 6(2)(a) of the Act, which prohibits registration in any District by a name which is identical with that of another registered society in existence in the same District.

4. Petitioner admittedly submitted representations to the 1st respondent on 10-10-2007 and 12-10-2007 requesting the

1st respondent to cancel registration of 3rd respondent Society, but the 1st respondent did not take any action. So, the petitioner approached the 2nd respondent by filing representations on 01-11-2007 and 28-11-2007 requesting the 2nd respondent to cancel the registration of 3rd respondent Society, and the 2nd respondent then got issued notice to the 3rd respondent and passed the impugned order on 11-04-2008. In the said order, the 2nd respondent stated as under:

“...7. The case relates to not only this Department but also to Revenue and Education Departments and since no provisions or remedial measures are prescribed in the A.P. Societies Registration Act, 2001 to check the violations mentioned above, this case should be resolved by means of arbitration under the Arbitration and Conciliation Act, 1996 or on an application to be filed in the District Court as held in Andhra Pradesh Karuma Sangam, Hyderabad Vs. Registrar of Societies, Andhra Pradesh, Hyderabad, 2003(4) ALD 472. Accordingly, the case is dismissed”.

5. Assailing the same, this Writ Petition is filed.
6. Learned counsel for petitioner contends that having registered the 3rd respondent in violation of Section 6(2)(a) of the Act, the 2nd respondent cannot ask the petitioner to resolve its issue with 3rd respondent by means of arbitration or by approaching the District Court invoking Section 23 of the Act. He contended that Section 23 of the Act would attract only in the event of disputes arising among the Committee or members of a Society in respect of any matter relating to the affairs of the Society, but it will not be attracted in the

case of disputes between 2 societies of the nature alleged by petitioner.

7. Learned counsel for 3rd respondent Sri K.Anantha Rao, however, contended that under the provisions of A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli, it is mandatory to file annual lists and that the petitioner filed annual lists for 23 years at a single time and did not conduct committee meetings quarterly and General Body Meetings once a year and therefore it cannot be said to have been existing in the same District.

8. Learned counsel for petitioner refuted the said contentions and pointed out that the Act repealed A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli, that this is specifically stated in sub-Section (1) of Section 32 of the Act, but as per sub-Section (3) of Section 32 of the Act, registration done of the petitioner Society under the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli continues to be valid. He contended that once such registration is valid, before registering the 3rd respondent Society, the 2nd respondent ought to have verified the register maintained by him regarding desirable names of societies proposing to get registered and then only effect registration in view of Section 6 of the Act and in particular clause (a) of sub-Section (2) thereof. He contends that without following due procedure, the 2nd respondent registered the

3rd respondent Society in 2006 under the provisions of the Act, and the 2nd respondent therefore is bound to cancel the registration of 3rd respondent Society since the 2nd respondent had violated Section 6(2)(a) of the Act. He further contended that the provisions relating to filing of annual lists contained in Section 9 of the Act and holding of General Body Meetings under Section 20 of the Act cannot be said to be mandatory since no penalty is prescribed in the Act if they are violated. He therefore contended that merely because annual lists were not filed or General Body Meetings were not conducted or evidence of such annual lists and conducting of General Body Meetings have not been filed with the 2nd respondent, no conclusion can be drawn by 2nd respondent about the non-existence of the petitioner Society.

9. Learned Government Pleader for Revenue appearing for respondent Nos.1 and 2 supported the order passed by the 2nd respondent.

10. I have noted the contentions of both sides.

11. Admittedly, the petitioner Society is registered under the A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli. The said statute was repealed by Section 32(1) of the Act, but under sub-Section (2) of Section 32 of the 2001 Act, registration of Societies done under the A.P. (Telangana Area) Public Societies Registration

Act, 1350 Fasli continues to be valid and it is treated as having been done in exercise of powers conferred by the Act.

12. Therefore, the registration of the petitioner would continue to be valid even after coming into force of the Act.

13. No doubt both the statutes contain provision of filing of annual lists of members and holding of General Body Meetings periodically, but no penalty is prescribed for not filing the annual lists or not holding the General Body Meetings or for not filing proof of holding of General Body Meetings with the Registrar. Therefore, merely because the petitioner had filed annual lists for 23 years at a time before the Registrar or evidence of conducting of Committee meetings every quarter and General Body Meetings once in a year was not filed, the petitioner cannot be said to be not in existence in the same District as the 3rd respondent.

14. Section 6 of the Act directs that certain societies be not registered with undesirable names. Sub-Section (1) thereof prohibits registration of Societies in a District by a name, which is identical which contravenes the provisions of the Emblems and Names (prevention of the improper Use) Act, 1950. Clause (a) to sub-Section (2) thereof states:

“ 6(2) (a) No society shall be registered in a District by a name, which is identical with that of another registered society in existence in the same District or so nearly resembling it so as to

mislead except where the registered society in existence is in the course of being dissolved and signifies in writing its consent to such registration.”

15. Therefore, when 3rd Society made an application for registering it in the year 2006, a statutory duty was cast on the 2nd respondent to verify his Register and if such verification discloses the registration of petitioner Society way back in the year 1984, he ought not to have registered the 3rd respondent Society. The very fact that 3rd respondent came to be registered by 2nd respondent suggests that no verification of the Register was done by 2nd respondent at the time when the 3rd respondent was registered even though the 3rd respondent had a name which was identical with that of the petitioner Society, which was already registered in the year 1984.

16. Since this matter is within his purview to rectify, the 2nd respondent could not have passed the impugned order directing the parties to approach an Arbitrator or a Civil Court for adjudicating their disputes invoking Section 23 of the Act. The provisions of Section 23 of the Act will not apply in the case of disputes between 2 different Societies and can be invoked only if there are disputes among a Committee or members of a Society in respect of matters relating to affairs of a Society.

17. In this view of the matter, the impugned order is set aside and the registration of 3rd respondent Society with a name identical to that

of the petitioner Society by respondent Nos.1 and 2 in violation of Section 6(2)(a) of the Act, is also set aside.

18. The Writ Petition is allowed accordingly. No costs.

19. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-10-2017

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