

HONOURABLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No. 14816 of 2007

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Endowments.

The prayer of the writ petition is as under:

“To issue a writ, order or direction more in the nature of mandamus declaring the notifications issued by the first respondent vide Rc.No.J3/141/99-4 dated 31.07.1999 which was published in A.P. Gazette No.34 dated 23.09.1999 (Ex.P-1) at Sl.No.79 and the erratum notice issued vide Rc. No.J3/141/99 dated 24.07.2003 which was published in A.p. Gazette No.33 dated 14.08.2003 (Ex.P-2) at Sl.No.30 and also the subsequent letter Rc.No.C/490/98 dated 31.05.2007 (Ex.P-3) issued by the second respondent calling upon the petitioner’s institution to submit proposals for registration under Section 43 of A.P. Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987 as illegal, arbitrary, without jurisdiction, violative of Article 14 of the Constitution of India and contrary to the provisions of the Act.”

The facts of the case are that the petitioner is a Society registered under the Societies Registration Act 1 of 1350 Fasli. The membership of the petitioner institution is opened to all the residents of Nizamabad District, who have attained the age of 18 years. The main object of the institution of the petitioner is to provide every opportunity and other necessary facilities for promotion of literature and diffusion of knowledge among the public of Nizamabad District by providing free reading room for general public, issuing books to the members for study at home, maintaining and providing regional daily newspapers, periodicals, magazines etc. Since registration, the petitioner institution is functioning strictly in accordance with the rules and regulations framed by it. The

petitioner institution is also possessing movable and immovable properties in Nizamabad. While matters stood thus, in the month of December, 1991, the 2nd respondent addressed a letter to the petitioner institution calling upon it to submit proposals for the purpose of registration under Section 43 of A.P. Charitable and Hindu Religious Institutions and Endowments Act 30 of 1987(for short 'the Act'). Though a reply has been given to the effect that the petitioner institution is neither a temple nor a charitable institution or an endowment within the meaning of the Act, no orders are passed and in fact, another notice vide No.C/2650/91 dated nil-7-1993 was issued calling upon the petitioner to submit proposals for its registration under Section 43 of the Act. The petitioner institution got issued a suitable reply notice dated 10.8.1993 through a counsel. Thereafter, there was no response from the respondents. However, again after lapse of two years, the 2nd respondent issued another notice No.C/2650/91 dated 25.08.1995 asking the petitioner institution to register itself under Section 43 of the Act. In response, the petitioner institution got issued a reply notice dated 7.10.1995 reiterating the contentions made in the earlier reply notice. Again after three years, the 2nd respondent issued another letter No.C/490/98 dated 1.6.1998 calling upon the petitioner to submit proposals under Section 43 of the Act. In reply thereto, the petitioner institution submitted a reply on 27.06.1998 narrating all the

events which had taken place earlier in response to the notices which were issued. As no further action was taken up, the Managing Committee of the petitioner institution was under the impression that the respondents have satisfied with the reply given and dropped further proceedings. However, yet another letter No.C/490/98 dated 31.05.2007 was issued by the 2nd respondent calling upon the petitioner institution to submit proposals for registration under Section 43 of the Act. In the said letter, it was mentioned that the petitioner institution has been published under Section 6(c)(i) of the Act keeping in view the earlier proceedings and after obtaining legal opinion. Aggrieved by the said proceedings, the present writ petition is filed.

Respondent Nos. 1 and 2 filed a counter-affidavit stating that Bapuji Vachanalam is situated in the middle of Nizamabad Town possessing valuable landed properties, buildings comprising of 70 rooms and two petrol bunks and having lakhs of turnover in the shape of leases, rents etc. However, self-styled committee formed with the co-operation of political leaders is misusing the funds of the institution. In fact, some of the old committee members made a complaint about the fraudulent nature of administration and misuse of the funds of the petitioner institution. Therefore, the 2nd respondent issued notices to the petitioner institution asking them to register themselves under the provisions of the Act. In fact, the 2nd respondent submitted a detailed report to the

1st respondent to publish the institution under Section 6(c)(i) of the Act. Pursuant thereto, the petitioner institution was registered under Section 6(c)(i) of the Act vide Rc.No.J3/141/99, dated 24.07.2003. In view of the said registration, the second respondent issued letters asking the petitioner institution to send proposals to register it under Section 43 of the Act for better management and to protect the public property which was donated to promote the literature among the people of Nizamabad District. It is also stated in the counter-affidavit that soon-after the publication orders were served on the President and Secretary of the petitioner institution for submission of accounts, the petitioner institution submitted a letter dated 08.06.2007 stating that it will submit the accounts within a period of ten days, but failed to submit the same. Therefore, it is presumed that the functions of the petitioner institution are only to misuse the public property without following the rules. It is also stated that the institution is under the management of fraudulent Committee. The respondents have also specifically stated that under Clauses 4 and 5 of Section 2 of the Act, the petitioner institution comes within the definition of "Charitable Institution" for the purpose of providing education etc. Since the petitioner institution is meant for education and welfare of the general public, it is not a government library and it comes under the purview of the Act.

The petitioner institution filed a reply affidavit denying the averments made in the counter-affidavit and *inter alia* contended that without causing any proper enquiry and without issuing any notice, the 2nd respondent submitted a report dated 04.06.1999 to publish the petitioner institution under Section 6 of the Act and requested to communicate the publication orders. Though, originally, the 1st respondent published the petitioner institution under Section 6(c)(ii) of the Act, but after confirmation, a revised proposal was submitted by the 2nd respondent for change of publication, and as such errata orders were published treating the petitioner institution under Section 6(c)(i) of the Act vide Rc.No.J3/141/99 dated 24.07.2003. Therefore, the action of the respondents in issuing the letters and registration of the institution under Section 6(c)(i) of the Act is arbitrary, without jurisdiction and violative of Article 14 of the Constitution of India and also contrary to the provisions of the Act.

Learned counsel appearing for the petitioner institution contended that for the last 60 years the Committee of the petitioner institution is taking care of the affairs in a smooth manner without any complaint from any corner. The petitioner institution will not come within the purview of the provisions of the Act. In fact, the petitioner institution was established with the object of promotion of literature and diffusion of knowledge among the public of Nizamabad District by providing newspapers, periodicals, magazines etc.

The petitioner institution is having movable and immovable properties in Nizamabad. The allegation made by the respondents that there is misappropriation of funds of the petitioner institution by the Committee with the co-operation of the political leaders is far from truth. Though from the month of December, 1991, when the 2nd respondent addressed a letter to the petitioner institution calling upon it to submit proposals for the purpose of registration under Section 43 of the Act, the petitioner institution submitted reply to the effect that it is not a charitable institution or endowment within the provisions of the Act. In continuation of the same, letters dated Nil.07.1993, 10.08.1993, 25.08.1995, 01.06.1998 and 31.05.2007 were issued calling upon the petitioner institution to submit proposals. For every letter the petitioner institution submitted detailed explanation bringing to the notice of the 2nd respondent that it is not a charitable institution and it is governed by the provisions of the A.P. Education Act, 1982. In this aspect, learned counsel for the petitioner brought to the notice of the Court Section 2(4) of the Act stating that charitable institution means any establishment, undertaking, organization or association formed for a charitable purpose and includes a specific endowment and dharmadayam. Therefore, the petitioner institution will not come within the definition of the above said provision. He also submits that the petitioner institution cannot be treated as a charitable institution or endowment

within the meaning of Section 6(c)(i) of the Act. In fact, the petitioner institution is covered by the Public Libraries Act. Though the petitioner institution was repeatedly giving explanations that it cannot be treated as a charitable institution within the definition of Section 2(4) and charitable purpose under Section 2(5) of the Act, the 2nd respondent has not passed any orders till date. When the 2nd respondent has not passed any orders on the explanations given by the petitioner institution without the registration as contemplated under the provisions of the Act, the question of submitting the proposals does not arise. He also submits that the 2nd respondent, being a public servant representing the Government, is expected to act in a manner known to law when an objection was raised with regard to the letters issued that the petitioner institution is not a charitable institution, he ought to have considered the same and passed appropriate orders. On the ground of just and fair and the principle of reasonableness, learned counsel submitted that the action of the 2nd respondent is arbitrary and violative of Articles 14 and 21 of the Constitution of India. To support his contention, he relied on the judgment of this Court in **Sri V.V.V.R.K. Yachendra v. State of A.P., rep., by its Secretary, Hyderabad**¹. The relevant paragraphs are as under:

“There is no express provision in the section obliging the Commissioner to issue notice to the trustee of a private temple before enlisting the temple as a public temple. But,

¹ 1987 (1) ALT 256

having regard to the consequences of the notification under Sec.6(c)(ii), it can not be doubted that it affects the civil rights of trustees like the petitioner. It is well settled that when civil rights of a citizen are affected by the proposed action under provisions of Act, compliance of the principles of natural justice is implicit, unless this requirement is specifically taken away by the statute itself. In *Smt. Menaka Gandhi vs. Union of India and others* (AIR 1978 SC 597) the passport Act of the petitioner was impounded without notice to the petitioner as there was no provision in the Passport Act requiring the authorities to give notice before impounding the Passport, the Supreme Court observed:

“The principle of reasonableness, which legally as well as philosophically, is an essential element of quality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be “right and just and fair” and not arbitrary, fanciful or oppressive: otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

Per contra, learned Government Pleader appearing for the respondents would submit that the petitioner institution will come within the provisions of the Act. She brought to the notice of the Court the definition of Sections 2(4) and 2(5) of the Act, which are as under:

“2(4) ‘*Charitable institution*’ means any establishment, undertaking, organization or association formed for a charitable purpose and includes a specific endowment and dharmadayam.

2(5) ‘*charitable purpose*’ includes –

- (a) relief of poverty or distress;
- (b) education;
- (c) medical relief;
- (d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively religious nature.”

She further submitted that since the charitable purpose includes education, the petitioner institution would come within the definition of a charitable institution. She also submits that in the year 1998 when a major complaint was filed against the self-styled committee of the petitioner institution for fraudulent nature of administration and misuse of funds, the 2nd respondent issued notice calling upon the petitioner institution to submit its proposals. In fact, the 2nd respondent submitted a detailed report to the 1st respondent for publishing the petitioner institution under Section 6 of the Act. Pursuant thereto, the petitioner institution has been shown in the list of charitable and religious institutions and endowment by way of publication vide Rc.No.J3/141/99, dated 24.07.2003. By virtue of the same, the petitioner institution is liable to submit the proposals as sought by the 2nd respondent for the purpose of registering the institution under Section 42 of the Act for better management and to protect the public property.

From a perusal of the record the undisputed facts are that the petitioner institution has been registered under the Societies Registration Act with the main object of promotion of literature and providing regional daily newspapers, periodicals, magazines etc., to the public of Nizamabad. The petitioner institution said to have been functioning strictly in accordance with the rules and regulations framed by it. Though letters are being addressed to the petitioner

institution since 1991 till 2007 and when admittedly explanations have been given raising an objection that the petitioner institution will not come within the provisions of the Act, till date no orders have been passed by the respondents. The respondents have not produced before this Court any evidence to the effect that any orders are passed or published on inclusion of the petitioner institution in the list of charitable and religious institutions and endowments on the basis of income or any notice has been issued in spite of there being a serious objection from the petitioner institution. That apart, when the 2nd respondent has submitted a detailed report to the 1st respondent for inclusion of the petitioner institution in the list of charitable institutions based on the income, no notice is issued to the petitioner either before registering or after the report is submitted.

Learned counsel for the petitioner institution also submitted that as far as inclusion of the petitioner institution under Section 6(c)(i) of the Act is concerned, they have no knowledge and they are not aware of it. Even on that aspect also, the respondents have not produced any evidence before this Court that the said proceedings are served on the petitioner institution.

In fact, though there is no specific provision under Section 6(c)(i) of the Act, enabling respondent Nos.1 to 3 to issue notice to the petitioner institution before enlisting it as a public temple, having regard to the consequences of

notification issued under Section 6(c)(i) of the Act, it cannot be doubted that it affects the rights and interest of the petitioner institution. It is also well settled that when civil rights of a citizen are affected by the proposed action under the provisions of the Act, compliance of principles of natural justice is implicit, unless this requirement is taken away by the statute itself. The Apex Court in **Menaka Gandhi v. Union of India and others**², as stated supra, was pleased to observe that the principle of reasonableness which legally as well as philosophically is an essential element of quality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated under Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. Therefore, it must be right and just and fair and not arbitrary, fanciful or oppressive otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.

In the case on hand, in spite of the petitioner giving detailed explanations to the notices issued in the month of December, 1991, 10.08.1993, 25.08.1995, 07.10.1995, 01.06.1998, 27.06.1998 and 31.05.2007, no orders are passed till date. Further, even before passing the orders in proceedings Rc.No.J3/141/99, dated 24.07.2003, relying on the detailed report submitted by the 2nd respondent for inclusion of the petitioner institution under Section 6(c)(i) of

² AIR 1978 SC 597

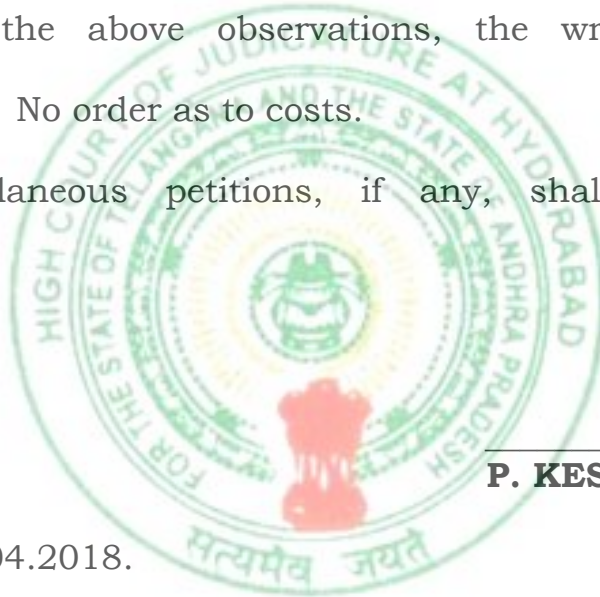
the Act, the 1st respondent has not issued any notice nor any publication is made in that regard. Therefore, viewed from any angle, unless specific orders are passed on the explanations submitted by the petitioner institution in response to the notices issued and also relying on the report submitted by the 2nd respondent before enlisting the petitioner institution under Section 6(c)(i) of the Act, the valuable rights of the petitioner institution under Article 14, will be affected. As such, on the principle of reasonableness, the petitioner institution requires an opportunity of being heard and it is essential to test the arbitrariness which pervades Article 14 of the Constitution of India.

In these circumstances, this Court feels that unless specific orders are passed pursuant to the explanations submitted by the petitioner institution, the petitioner institution cannot be forced upon to accept the directions of respondent Nos.1 to 3. In view of the law laid down by the Apex Court, as stated supra, this Court is of the opinion that the respondents are obligated to pass appropriate orders on the explanations submitted by the petitioner institution and the petitioner institution is entitled for notice before registering it under Section 6(c)(i) of the Act. Hence, respondent Nos.1 to 3 are directed to pass appropriate orders pursuant to the explanations submitted by the petitioner institution in reply to the notices, as stated supra, after giving an opportunity of being heard to it, and communicate the

same to the petitioner within a period of six weeks from the date of receipt of a copy of this order. It is needless to observe that since the proceedings in Rc.No.J3/141/99 dated 24.07.2003 are not served on the petitioner institution, it is open for it to challenge the same before an appropriate forum as per law. Till the entire exercise is completed, the respondents are directed not to take any coercive steps against the petitioner institution pursuant to the above said proceedings.

With the above observations, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.



P. KESHAVA RAO, J

Date: .04.2018.
ES/CCM