

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.34141 of 2018

ORDER:

This writ petition is filed with the following prayer:

“ to issue writ or order or direction, more so in the nature of Writ of Mandamus, declaring the action of the respondents 1 and 2 in insisting the petitioner's institutions to register under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 is nothing but illegal, arbitrary, high handed, violative of principles of natural justice, violative of provisions of Juvenile (Care and Protection of Children) Act, 2015, violative of Articles 14, 19 and 21 of Constitution of India and consequently declare that the work of the petitioner's institutions does not fall under the category of the definition of the word, “ Child in Need of Care and Protection under the Juvenile Justice (Care and Protection of Children) Act, 2015 and need not be registered under Section 41 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and pass such other order or orders as this Hon'ble court deems fit and proper in the circumstances of the case.”

The brief facts which are necessary for disposal of this writ petition are as under:

The petitioner is running hostels and providing education to the children who are having parents and guardians. The parents and guardians of children come to the place of petitioner-institutions and enquire about health and other related issues. While things stood thus, the 2nd respondent issued proceedings vide Lr.No.P2/120/20158,

dated 11-07-2017 informing that child care institutions were previously getting licenses under Women's and Children's Institutions (Licensing) Act, 1956 have to be registered under Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act"). The first respondent instructed that all the Child Care Institutions should get registered only under the Act. Under Section 41 of the Act, the registration of child care institutions under this section irrespective of being registered or licensed under any other act on the time being in force and the existing procedure of getting licenses under Women's and Children's Institutions (Licensing) Act, 1956 is no more valid. The petitioner filed detailed explanation on 08-09-2017 stating that provisions of Juvenile Justice Act has no application to the institutions run by it, since they are not housing any children who are in need of care and protection as defined under Section 2 (14) of the Act. Without passing any orders, though the said Act has no application to the petitioner, the official respondents are pressurizing to launch prosecution under Section 42 of the Act against the petitioner.

Learned counsel for the petitioner relied on the judgment of Kerala High Court in **Calicut Orphanage v. Union of India**¹ and also relied on circular issued by Orissa Government, dated 22-06-2015 and says that petitioner's case is squarely falls under the said circular.

¹ 2017 SCC Online Ker 35927

On the other hand, learned Government Pleader for Women Development and Child Welfare basing on the judgment of Supreme Court passed in WP.(Criminal) No.102 of 2007, dated 05-05-2017 submits that since the petitioner is maintaining the institutions where children are housed, they have to seek registration under the provisions of the Act.

[Section 2\(14\)](#) defines child in need of care and protection as under:

- "(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person;
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage."

The case of the petitioner is that their institutions are not housing the children who are covered by Section 2 (14) of the Act and the petitioner has already given explanation to the show-cause notice issued by the respondents. The factual aspect as to whether the petitioner's case is covered under Section 2 (14) of the Act has to be dealt with by the 2nd respondent.

In view of the same, the 2nd respondent is directed to consider the explanation of the petitioner and after giving opportunity of hearing to the petitioner pass necessary orders by considering the objections. It is also open for the petitioner to file whatever material they want to place and also judgments relied on by it and the 2nd respondent is directed to consider the same and pass orders in accordance

with law. Till passing of such orders, no coercive steps will be taken against the petitioner.

Accordingly, the writ petition is disposed of. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

24-09-2018

Note:
Issue CC in two days.
B/o.
Nvl



