

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. Nos. 31226 & 31957 of 2019
and

W.M.P. Nos. 31369 & 32209 of 2019

W.P. No. 31226 of 2019

Buds of Heaven

Special Children Home for Women

Rep by its President

Mrs. A. Sagaya Marry

W/o. Anthonysamy

No.7, 'B' Block

Anthoniar Koil Street

Govinda Salai

Puducherry - 605 001.

... Petitioner

Vs.

1. Union of India. Rep by
The Chief Secretary to Government
Government of Puducherry
Chief Secretariat
Puducherry - 605 001.

2. The Secretary to Government (Welfare)
Chief Secretariat
Puducherry - 605 001.

3. The Director
Directorate of Social Welfare
Puducherry.

4. The Chairman
Child Welfare Committee
Puducherry Region
Ariyankuppam
Puducherry - 605 007.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, forbearing the Second Respondent from cancelling the Certificate of Registration of the Petitioner's Home Buds of Heaven without following due process of law.

For Petitioner : Mr. M. Gnanasekar

For Respondents : Mr. D. Ravichander
Additional Government Pleader
(Puducherry)

W.P. No. 31957 of 2019

Buds of Heaven
Special Children Home for Women
Rep by its President
Mrs. A. Sagaya Marry
W/o. Anthonysamy
No.7, 'B' Block
Anthoniar Koil Street
Govinda Salai
Puducherry - 605 001. Petitioner

Vs.

1. Union of India. Rep by
The Chief Secretary to Government
Government of Puducherry
Chief Secretariat
Puducherry - 605 001.
2. The Secretary to Government (Welfare)
Chief Secretariat
Puducherry - 605 001.
3. The Director
Directorate of Social Welfare
Puducherry.
4. The Chairman
Child Welfare Committee
Puducherry Region
Ariyankuppam
Puducherry - 605 007. Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorarified Mandamus, Calling for the records pertaining to the order of the 3rd respondent dated 8.11.2019 made in No. 9894/ DSW/ DD/ HW-1/ 2019 and to quash the same and consequently restraining the respondents 1 to 4 from interfering with the functioning of the petitioners home Buds of Heaven.

For Petitioner : Mr. M. Gnanasekar

For Respondents : Mr. D. Ravichander
Additional Government Pleader
(Puducherry)

COMMON ORDER

Heard Mr. M. Gnanasekar, Learned Counsel for the Petitioner, Mr. D. Ravichander, Learned Additional Government Pleader (Puducherry) appearing for the Respondents and perused with the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner is an institution for the persons with disabilities registered under the provisions of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act' for brevity). The Third Respondent had issued a notice dated 18.09.2019 to the Petitioner stating that in view of certain discrepancies noted during the inspection on 05.09.2019, the Petitioner shall show cause as per Section 52 of the Act as to why to the Certificate of Registration shall not be revoked, which is extracted below:-

"Government of Puducherry
Directorate of Social Welfare
No.9894/DSW/DD/HW-1/2019 Puducherry, dated
18/09/2019

Show Cause Notice

Sub : DSW - DD - Section 52 (1)(b) of the Rights of Persons with Disabilities Act, 2016- Show Cause Notice to Buds of Heaven Special Home for Women - Issued - Regarding.

Buds of Heaven, a NGO run licensed residential Home for Women with special needs, functioning at No.3, Bhagath Singh Street, Puducherry was inspected by the Secretary to Government (Welfare), the Director of Social Welfare, Chair Person and Member of Child Welfare Committee and the representatives from Child line on 05.09.2019. On the day of inspection 31 mentally challenged Women are staying in the Home.

During the Inspection the following discrepancies were noted and are brought to the notice of the mangement:-

1. The institution was not in a position to cater to the needs of the inmates as per the conditions laid down and the strength of inmates has also increased.
2. Hygienic level and cleanliness of the home was in poor condition.
3. Inmates are found to be having skin diseases, shabbily dressed and malnourished.
4. No separate rooms and facilities were found for providing Rehabilitation therapy and vocation training for which NGO is registered.
5. Sufficient qualified staff were not engaged to look after the inmates.
6. No training hall, no training material and trainer found.
7. Details about Rehabilitation therapy, Vocational training was not provided to Inspection team.
8. Records such as sale register, staff details, inspection note, Discharge register, Daily Activities Register, Visitors book, log book (movement register) was not provided.

The Person in-charge of the Home is therefore directed to Show Cause as per Section 53 of the Rights of Persons with Disabilities Act, 2016, as to why the Certificate of Registration shall not be revoked. The reply should reach this Directorate within 15 days from the date of receipt of this Notice. If the reply is not received, a decision will be taken as exparte.

Sd./-

(K.SARANGAPANI)

Director of Social Welfare

To
The President
Buds of Heaven Special
Children Home for Women
No.3, Bhagath Singh Street
Puducherry."

In response to the same, the Petitioner had sent a reply dated 03.10.2019.

3. At that stage, the Petitioner has filed Writ Petition in W.P. No. 31226 of 2019 complaining that without serving any order of cancellation the Petitioner has been required to stop functioning and in such circumstances, a direction to forbear the Second Respondent from cancelling the Certificate of Registration of the Petitioner without following the due process of law had been sought.

4.Subsequently, on receipt of the Order No. 9894/DSW/DD/HW-1/2019 dated 08.11.2019 from the Third Respondent cancelling the Certificate of Registration of the Petitioner under Section 52 (1) of the Act, the Petitioner has filed W.P. No. 31957 of 2019 challenging the same and to consequently restrain the First to Fourth Respondents from interfering its functioning.

5.Learned Counsel for the Petitioner strenuously urges that the cancellation of the registration of the Petitioner under the provisions of the Act is not in accordance with law and it is in flagrant violations of principles of natural justice inasmuch as no proper enquiry had been conducted in the matter granting opportunity of personal hearing and that the impugned order of cancellation is a non-speaking one without even any findings as to the complaints of discrepancies mentioned in the show cause notice dated 18.09.2019 issued by the Third Respondent.

6.Learned Additional Government Pleader (Puducherry) appearing for the Respondents while justifying the impugned order contends that the prescribed procedure has been duly followed and the impugned order does not call for any interference.

7.Before proceeding to consider the rival submissions, it would be necessary to refer to the impugned order dated 08.11.2019 cancelling the registration of the Petitioner, which reads as follows:-

“ No.9894/DSW/DD/HW-1/2019
GOVERNMENT OF PUDUCHERRY
DIRECTORATE OF SOCIAL WELFARE

Puducherry, dated 08/11/2019
Order

Sub: DSW - DD - Certificate of Registration issued under Section 51(2) of the Rights of Persons with Disabilities Act, 2016 to M/s.Buds of Heaven Special Home for Women - Revocation of Certificate of Registration - Regarding.

Ref: No.9894/DSW/DD/HW-1/2019,Puducherry, dated 08/11/2019.

A show cause notice was issued under Section 52(1) (b) of the Rights of Persons with Disabilities Act, 2016 to the President M/s. Buds of Heaven Special Home

for Women, No.3, Bhagath Singh Street, Puducherry vide reference cited above. Subsequently, the institution has furnished its reply in letter No. Nil dated 03.10.2019 which was found to be unacceptable in terms of the provision under clause (4) of Rule (7) of the Puducherry Rights of Persons with Disabilities Rules, 2018.

Therefore the Certificate of register bearing No. 3 dated 13.12.2018 granted to M/s. Buds of Heaven, a NGO run residential Home for Women with special needs, No.3, Bhagath Singh Street, Puducherry has been revoked as per sub-section (1) of Section 52 of the Rights of Persons with Disabilities Act 2016 and the NGO is ceased of function from the date of such revocation of the Certificate of Registration issued under Section 51(2) of the Rights of Persons with Disabilities Act, 2016.

This issue with the approval of the appellate authority notified under Section 53 of the Rights of Persons with Disabilities Act, 2016.

/By order/

Sd./-

(K.SARANGAPANI)

Director of Social Welfare

To
The President
Buds of Heaven Special
Children Home for Women
No.3, Bhagath Singh Street
Puducherry."

On a perusal of the aforesaid order, it is evident that there is virtually no reasons stated for arriving at the conclusion that the Certificate of Registration issued to the Petitioner under Section 52(2) of the Act has to be revoked, except that the reply sent by the Petitioner was unacceptable in terms of the provisions of Rule 7(4) of the Puducherry Rights of Persons with Disabilities Rules 2018, which deals with the requirement of making application for Registration under Section 51 of the Act. Though there is a reference to the earlier show cause notice dated 18.09.2019 that had been issued, there is no discussion as to how the discrepancies mentioned therein have been found to be proved. In view of the aforesaid infirmity in the decision making process, it is not possible to sustain the impugned order and consequently, the same is set aside and the matter is remitted to the Third Respondent to be decided afresh following the relevant statutory provisions. It may be added by way of

clarification here that if it is the case of the Third Respondent that there has been any misrepresentation or suppression of any material particulars by the Petitioner at the time of making application for registration as per Rule 7(4) of the Puducherry Rights of Persons with Disabilities Rules, 2018, specific details of the same ought to be necessarily mentioned.

8. In order to expedite the proceedings, Learned Counsel appearing for the Petitioner as well as Learned Additional Government Pleader (Puducherry) appearing for the Respondents, on instructions from the respective parties, agree for conducting enquiry at 11.30 a.m. on 20.11.2019 before the Third Respondent to provide opportunity of personal hearing to the Petitioner or its authorized representative, without awaiting issuance of any formal notice for the same and the said submissions made are placed on record. The Third Respondent, after affording full opportunity of hearing to the Petitioner, shall consider each of the contentions raised, and shall pass reasoned orders on merits in accordance with law, uninfluenced and uninhibited by the impugned order, which has been set aside, and shall communicate the decision taken to the Petitioner under written acknowledgment.

9. In the result, the Writ Petitions are ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Secretary to Government, Government of Puducherry
Chief Secretariat, Puducherry - 605 001.
2. The Secretary to Government (Welfare)
Chief Secretariat, Puducherry - 605 001.
3. The Director, Directorate of Social Welfare, Puducherry.
4. The Chairman, Child Welfare Committee
Puducherry Region, Ariyankuppam
Puducherry - 605 007.

+1 cc to M/s.M.Gnanasekar, Advocate Sr.No.94284

+1 cc to The Government Pleader (Puducherry), Advocate Sr.No.94207

AKM/18.11.19/7P- 7C /

W.P. Nos. 31226 & 31957 of 2019