

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08/08/2019
Delivered on	20/08/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.35448 of 2004 &
W.P.M.P.No.42716 of 2004

V.C.Velingiri Gounder Memorial

Hostel Society,

Rep. by its Secretary Man Manrادیار,

15, ADT Street, Race Course,

Coimbatore - 18.

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Petitioner

Vs

1.The Government of Tamil Nadu,

Rep. by its Secretary,

Revenue Department,

Fort St. Geore, Chennai - 600 009.

2.The District Collector,

Coimbatore District,

Coimbatore.

3.The Commissioner of Land Administration,

Ezhilagam, Chepauk,

Chennai - 600 005.

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Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent pertaining to the impugned order in G.O.Ms.No.185, Revenue (Ni-Mu 5(1), dated 25.03.2004 and quash the same.

(G.O.No. amended as per order dated 22.06.2006 in
W.P.M.P.No.29369 of 2005)

(G.O.No. amended as per the order dated 18.02.2021
in W.M.P.No.25198 of 2020 in W.P.No35448 of 2004)

For Petitioner : Mr.P.Mahesh Kumar

For Respondents : Mr.I.Sathish
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorari to call for the records of the first respondent pertaining to the impugned order in G.O.Ms.No.185, Revenue Department, dated 25.03.2004 and quash the same.

2. The case of the petitioner is that the petitioner-Society was established in the year 1954 and one of the primary objects of the Society was to provide education, boarding and lodging facilities for Harijans and backward classes and all students in general. At the request of the petitioner-Society, the first respondent, by G.O.Ms.No.4267, Revenue Department, dated 21.11.1956, assigned 2 acres of land in T.S.No.14391/1 in Coimbatore with a condition that the Society shall use the site for construction of hostel building. Accordingly, the Society constructed a hostel building with total plinth area of 7885 sq.ft and running the same on no profit no loss basis, for all community students.

3. The petitioner would claim that the inmates of the hostel were mainly from Medical Colleges and Engineering Colleges in Coimbatore and later as the Colleges have constructed their own buildings for hostel to accommodate their students, there was a decrease in the number of inmates in the hostel. While so, the second respondent approached the petitioner, vide letter dated 27.03.1992, with the request to lease the hostel building for running a hostel for Adi Dravidar students. In order to comply with the request of the second respondent, the petitioner, by its letter dated 01.05.1992, agreed to provide its building as a temporary measure. The second respondent, by a letter dated 20.06.1992, informed the petitioner that they are ready to pay the monthly rent as per the norms of the Public Works Department. As such, from 01.07.1992, a hostel is being run by the respondent for accommodating Adi Dravidar students.

4. It is a case of the petitioner that near the hostel building, more than 1000 families are residing in the Government Servants' Quarters and there was no nursery school for the children of the Government Servants. Hence on 26.07.1995, the petitioner-Society sent a representation to the second respondent, seeking permission to construct a school building to start a nursery school as per the rules and regulations of the Educational Department. One more representation was given to the Hon'ble Revenue Minister of Government of Tamil Nadu on 14.08.2000.

5. The petitioner would also state that in respect of Coimbatre Diocese Society, Puliakulam Red Fields, St. Theresa's Middle School, Puliakulam Village and Landom Mission Church School in Coimbatore District, the respondents granted permission to run the nursery school. So, anticipating permission from the respondents, the petitioner started a nursery school in the year 1995 in the name and style of Shishu Vidhodaya School and about 150 students are studying in the classes from LKG to 5th Standard and most of them from the middle class family and a nominal fees are being collected from the School. When the request of the petitioner was pending, the first respondent issued a show-cause notice, dated 14.02.2000, seeking explanation for infringement of the conditions of the grant. The petitioner submitted a detailed explanation, dated 07.01.2001, however, without considering the same, the impugned G.O. came to be passed for resumption of the land in an arbitrary and illegal manner.

6. A counter affidavit has been filed on behalf of the respondents, stating that the Government after convincing with the object of the Society, issued G.O.Ms.No.4627, Revenue Department, dated 21.11.1956, with the specific conditions that the land shall be used for construction of a hostel building and for no other purposes. The Society also followed those objects

for a certain period of time, but later the Society wanted to commercialize the land. It collected rent from the Adi Dravidar Welfare Department for accommodation of Adi Dravidar Students, which clearly shows the intention of the Society to put the land into the commercial use. The petitioner submitted a letter dated 26.07.1995 to the District Collector, seeking permission to build a school and when the request of the petitioner was under process, it has already started the school, which is violation of the grant and prayed for dismissal of the Writ Petition.

7. Mr.P.Mahesh Kumar, learned counsel for the petitioner would submit that the petitioner-Society was established with an avowed object to organize and develop social service in Coimbatore District and to provide education, boarding and lodging facilities for students in general. By strictly adhering to the conditions in the grant, a hostel building was constructed measuring to an extent of 7600 sq.ft, by spending huge amount of Twenty Five Lakhs in the year 1956-57. When there were some vacancies in the hostel, the District Collector, Coimbatore, approached the petitioner-Society to accommodate Adi Dravidar students and in no time the petitioner agreed for the same. He further added that there was no demand from the petitioner with regard to rent, but as per the voluntary offer of the District Collector, a nominal rent is being paid for maintenance of the hostel.

8. The learned counsel by referring clause 2.5 of the grant would

argue that there is no prohibition or ban for the Society to collect minimum charges and even if any profits arising therefrom shall be invested in further expansion of the Society and later in charitable purpose. According to the learned counsel, providing education to the children of the Government employees is one of the charitable purposes and hence, absolutely there was no violation of the grant. He further submitted that the Society has been running the School from the year 1995 with the permission from all Government Authorities and a Certificate of Recognition has been issued in Form No.2, by the Director of Matriculation School, Chennai and granted permission on 28.08.2018. So, unless the impugned order is set aside, it would cause serious prejudice to the students as well.

9. It is further argued that in respect of three other similar Societies in the same area, though lands were originally assigned for construction of hostel, but subsequently they were permitted to run primary schools. However, insofar as the petitioner-Society, a different yardstick is being adopted in violation of Articles 14 and 16 of the Constitution of India. It is the contention of the learned counsel that no conditions in the grant has been violated and running a school would not make any difference as the object is to provide facilities to the students.

10. Per contra, Mr.I.Sathish, learned Additional Government Pleader for the respondents would contend that the as petitioner-Society has violated the conditions of the grant, there is no illegality in the impugned order.

11. Heard Mr.P.Mahesh Kumar, learned counsel for the petitioner; Mr.I.Sathish, learned Additional Government Pleader for the respondents and perused the materials placed on record.

12. In the case on hand, it is not in dispute that the petitioner is a registered Society and it was established in the year 1954 . The primary object of the Society is to provide education, boarding and lodging facility for Harijans, Backward Classes and all students in general. The first respondent having satisfied with the objects of the Society, by issuing G.O.Ms.No.4267, Revenue Department, dated 21.11.1956, directed the plot of land in T.S.No.1439/1, measuring to an extent of 2 acres be alienated and placed at the disposal of the petitioner-Society for the use of the construction of the hostel building.

13. It is an admitted fact that as per the conditions in the grant,

the Society had established the hostel within a period of two years and they have been running the same without any complaints from any quarters for about 45 years. It is not disputed that the District Collector, Coimbatore, sent a letter dated 27.03.1992 to the Society, requesting to let the building for rent for the purpose of accommodating 100 students, who were studying from 6th to 12th standard of the nearby School on the ground that the boys school, which was functioning at Ramanathapuram had to be shifted on safety point of view and Immediately, the petitioner positively responded to the notice.

14. It is to be noted that in the letter dated 27.03.1992, the District Collector, Coimbatore, voluntarily offered to pay rent as fixed by the Public Works Department, but in the counter affidavit it has been stated as if exorbitant rent was demanded by the Society. Moreover, the quantum of rent that is being paid could be utilized only for maintenance of the building and providing other facilities to the students. Therefore, this Court does not find any substance in the contention of the respondents that the building is used for commercial purpose.

15. It is pertinent to note that by a letter dated 26.07.1995, the petitioner-Society sought permission from the District Collector for construction of a school. It is a case of the petitioner that the District

Collector inspected the site on 21.11.1995 and sent a report to the third respondent, recommending to make necessary amendments, enabling the petitioner-Society to run a school. The third respondent also forwarded the recommendation of the District Collector along with his comments to the first respondent for passing necessary orders.

16. It is apposite to mention here that though a detailed counter has been filed on behalf of the respondents, the factum of recommendations made by the respondents 2 and 3 have not been disputed and on the contrary, the respondents have admitted in their counter that the petitioner already sought permission from the respondents to start a school in the land. The petitioner has categorically stated in the affidavit that the respondents had granted permission to three other similar Societies for running Nursery Schools in the same area. However, no explanation has been given neither in the counter nor in the submission of the learned Additional Government Pleader, why the request of the petitioner was not considered and different yardstick was adopted to the case of the petitioner. Therefore, I am convinced that the respondents are exercising their discretionary power in an arbitrary and whimsical manner.

17. Reference may be made to the following decisions of the

Hon'ble Supreme Court:

(i) (1979) 3 SCC 489 : (AIR 1979 SC 1628) [Ramana Dayaram

Shetty vs. International Airport Authority of India and Ors.]

" 21. This rule also flows directly from the doctrine of equality embodied in Article 14.

It is now well settled as a result of the decisions of this Court in E. P. Rayappa v. State of Tamil Nadu : (1974)ILLJ172SC and Maneka Gandhi v. Union of India : [1978]2SCR621 that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality.

The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law.

The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

This principle was recognised and applied by a

Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicak v. State of West Bengal (supra)* where the learned Chief Justice pointed out that "the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade, by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting.... A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling.... It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods."

It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot

arbitrarily choose any person it likes for entering into "such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground ."

(emphasis supplied)

(ii) (2009) 4 SCC 170 [Union of India (UOI) vs. Dharam Pal]

15. We, therefore, are of the opinion that the Tribunal and consequently the High Court committed a serious error insofar it failed to take into consideration the binding authorities of this Court. While saying so, we are, however, not oblivious of the fact that in a short judgment in *Raj Kishore Vishwakarma and Ors. v. Union of India and Ors.* : (1997)11SCC619 , this Court held:

4. Mr. Vikram Mahajan, learned Counsel appearing for the Railways, has very fairly stated that the appellants were appointed in relaxation of the Rules in exercise of the powers under Rule 113. He has taken us through the counter filed before the Tribunal and also before this Court wherein it is clearly stated that the appellants were appointed in relaxation of the Rules. We are of the view that the appellants having been appointed in

relaxation of the Rules their appointments have to be treated under the Rules. When the appellants were appointed under the Rules even the ad hoc period, which is continuous, has to be taken into consideration for the purpose of fixation of seniority in the cadre of Typists.

16. However, the factual matrix obtaining in the said case was absolutely different. In that case power of relaxation was invoked. Herein we are not concerned with any power of relaxation. In any view of the matter, it is now well settled that even power of relaxation even specifically provided in the appointing authority himself being created a statute cannot be exercised in an arbitrary and cavalier fashion."

(emphasis supplied)

18. This Court also finds force in the contention of the learned counsel for the petitioner that running a primary School is not infringement of grant, as the petitioner is running a School to facilitate to the children of the Government servants to get primary education. It is the contention of the respondents that the petitioner is utilizing the land for commercial purpose, as observed supra, rent was only a marginal amount for maintenance of the building and no materials have been placed on record to substantiate their case.

19. For the foregoing reasons, I am of the considered view that the order impugned in this Writ Petition is liable to be set-aside, accordingly, it is set-aside. In fine, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

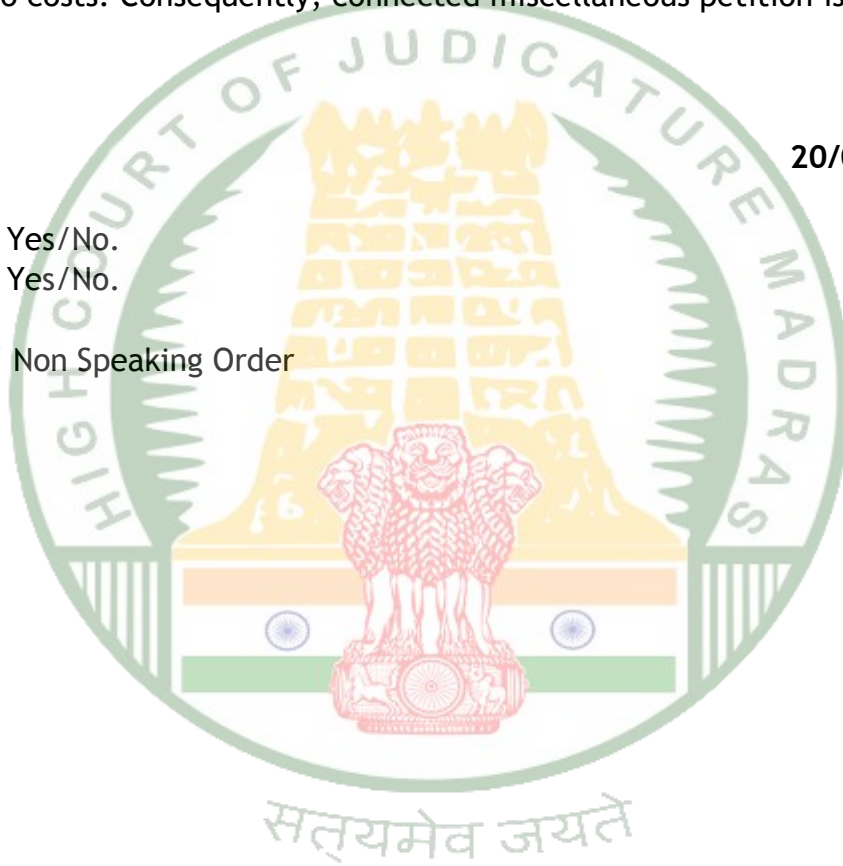
20/08/2019

Index : Yes/No.

Internet : Yes/No.

Speaking/ Non Speaking Order

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WEB COPY

To

- 1.The Secretary,
Government of Tamil Nadu,
Revenue Department,
Fort St. Geore, Chennai - 600 009.
- 2.The District Collector,
Coimbatore District,
Coimbatore.
- 3.The Commissioner of Land Administration,
Ezhilagam, Chempauk,
Chennai - 600 005.



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W.P.No.35448 of 2004

K.KALYANASUNDARAM.J.

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Pre Delivery order in
W.P.No.35448 of 2004 &
W.P.M.P.No.42716 of 2004

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20/08/2019

W.M.P.No.25198 of 2020

in

W.P.No.35448 of 2004

K.KALYANASUNDARAM, J.

ORDER

It is the case of the petitioner that the Government Order impugned in the writ petition is G.O.Ms.No.158, Revenue (Ni.Mu 5(1)) dated 25.03.2004, instead, it is wrongly mentioned as G.O.Ms.No.185, Revenue (Ni.Mu.5(1)) dated 25.03.2004.

2.The facts of the case in brief would run thus:-

The petitioner is a Society and it was established in the year 1954. The Government of Tamil Nadu vide G.O.Ms.No.4267, Revenue Department, dated 21.11.1956 granted plot of land comprised in T.S.No.1439/1, Ward No.1, Block 36 of Coimbatore Town measuring to an extent of 2 acres for establishment of a hostel building. However, by the impugned G.O.Ms.No.158 dated 25.03.2004, the Government cancelled the grant and directed to resume the land for violation of the conditions in the grant. Challenging the said cancellation, the writ petition was filed and it was allowed setting aside the G.O, on 20.08.2019.

3.The learned counsel for the petitioner would state that though in the originally the petitioner sought to cancel the G.O.Ms.No.158 dated 25.03.2004, but in view of the mistake crept in the clean copy of the G.O, annexed in the typed set, G.O, number was changed from G.O.Ms.No.158 dated 25.03.2004 into G.O.Ms.No.185 dated 25.03.2004. It is further submitted that the petitioner applied for issuance of G.O.Ms.No.185 dated 25.03.2004, a reply was given stating that there is no such G.O, to the said corresponding date. A letter issued by the Information Officer is enclosed in the typed set of papers.

4.I have heard the learned Government Advocate appearing for the respondents.

5.A perusal of the records shows that the grant made in favour of the petitioner Society granting land in T.S.No.1439/1, Ward No.1, Block 36 of Coimbatore Town was cancelled by G.O.Ms.No.158, Revenue Department (Ni-Mu 5(1)) dated 25.03.2004. A Xerox copy of the G.O.Ms.No.158 dated 25.03.2004 was also filed along with the writ

petition. Though originally the petitioner prayed to set aside the G.O, but inadvertently, the G.O number was amended as G.O.Ms.No.185. Therefore, I find force in the contention of the learned counsel for the petitioner.

6.In such view of the matter, this petition is ordered.

18.02.2021

Index :Yes/No
Internet:Yes/No
am/skn

Note :

1. The Registry is directed to issue fresh amended order copy in W.P.No.35448 of 2004 on 24.02.2021

2.In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

W.P.No.35448 of 2004

K.KALYANASUNDARAM, J.

skn



ORDER MADE IN

W.M.P.No.25198 of 2020

in

W.P.No.35448 of 2004

WEB COPY

18.02.2021