



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.06.2021

DELIVERED ON : 17.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.13271 of 2020

and

W.M.P. (MD) .Nos.11096, 14272 and 14274 of 2020

Network for Positive People in Trichy
Represented by its Managing Trustee
Mrs.A.Thamil

... Petitioner

vs.

1)State of Tamil Nadu,
Rep by its Secretary to Government,
Health & Family Welfare Department,
Fort St.George,
Chennai-600 009.

2)Tamil Nadu State Aids Control Society,
Rep by its Member Secretary,
No.417, Pantheon Road,
Egmore, Chennai-600 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, to declare G.O (Ms)No.51, dated 10.02.2020 issued by the 1st respondent and the consequential expression of interest published in the web portal of the 2nd respondent (<https://tnsacs.in>) as illegal, so far it restricts the eligibility of the applicants of the Drop in Centres to be established under the said Government Order in the State of Tamil Nadu only to the legal entities registered under the Societies Registration Act, 1976, and consequentially direct the respondents to consider the petitioner's application dated 23.07.2020 under the said Government Order for the Drop in Centres for Trichy District.

For petitioner	: Mr.N.Murali Kumaran for M/s.McGAN Law Firm
For R1	: Mr.Veera Kathiravan Senior Standing Counsel
For R2	: Mr.M.Loganathan

ORDER

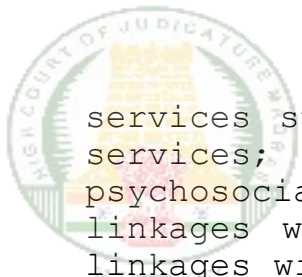
This writ petition has been filed by the petitioner, for issuance of a Writ of Declaration, to declare G.O(Ms)No.51, dated <https://hcservices.ecourts.gov.in/hcservices/>



10.02.2020 issued by the 1st respondent and the consequential expression of interest published in the web portal of the 2nd respondent (<https://tnsacs.in>) as illegal, insofar it restricts the eligibility of the applicants of the Drop in Centres to be established under the said Government Order in the State of Tamil Nadu only to the legal entities registered under the Societies Registration Act, 1976, and consequently to direct the respondents to consider the petitioner's application dated 23.07.2020 under the said Government Order for the Drop in Centres for Trichy District.

2.The learned counsel for the petitioner would state that the petitioner's Trust was formed by HIV infected persons (including the deponent, all the Board Members as well as the Members of the Trust are HIV infected persons) in the year 2002 and registered on 28.02.2006 as a Public Charitable Trust with Registration No.321/2006 under the Indian Trust Act, 1882, with a vision to improve the quality of all people living with HIV/AIDS(PLHAS) in Trichy to live a life of dignity, uniting with love care, security and support in all walks of their life. He would further state that the petitioner's Trust had successfully implemented the Drop in Center program in Trichy District funded by the Tamil Nadu State AIDS Control Society from 2008 to 2013. After 2013, Drop in Center program was not continued and the respondents have again proposed to re-implement the same by the impugned G.O, but in the said G.O., the 1st respondent restricted the participation for selection of Drop in Centers only to the entities registered under the Societies Registration Act, 1976. The learned counsel would further state in 2007, when a similar call was made, the legal entities registered under the Indian Trust Act, 1882 and Charitable and Religious Trust Act, 1920 were also permitted to participate and the petitioner having participated in the same, was selected under the said scheme and recognised as Drop in Center for Trichy and carried out the work from 01.06.2008 to 30.06.2013 without any blemish. Since the impugned G.O., proposing to revive the Drop in Center, excluded the entities registered under the Indian Trust Act, 1882 and Charitable and Religious Trust Act, 1920, violating Articles 14 and 19(1)(g) of the Constitution of India, the petitioner made representations and the 2nd respondent also informed the petitioner positively that by oversight, the entities registered under the above said Acts were excluded in the eligibility criteria of the impugned G.O. However, the Joint Appraisal Team of the 2nd respondent is conducting inspection for shortlisting the Drop in Centres, but the petitioner's Trust was neither inspected nor given proper reply. Hence, this writ petition.

3.The respondents have filed separate detailed counter affidavits denying the averments in the writ petition. Mr.Veera Kathiravan, learned Senior Standing Counsel appearing for the 1st respondent would state that the purpose of selection of Drop in Centres by way of the impugned G.O., is to protect the welfare of persons living with HIV/AIDS and their families and to provide



services such as, (a)Providing sustainable counselling and support services; (b)Orgnizing support group meetings; (c)Providing psychosocial support to PLHAs and their families; (d)Establishing linkages with care and support service providers; (e)Establishing linkages with Government Welfare Schemes; (f)Assisting people living with HIV/AIDS (PLHAs) in coping with issues; (g)Creating an enabling environment for obtaining services from the Government and private institutions. He would further state that as per the impugned G.O., the Drop in Centres shall be implemented through the State or District level registered Networks consisting of PLHAs who are registered societies under the Tamil Nadu Societies Registration Act, 1975.

4.The learned Senior Standing Counsel would further state that HIV Positive Networks who are registered as Societies would undertake the Drop in Centres(DIC) project because, (a)a Society is an organised group of atleast 7 persons who are joined together for fulfilling a particular objective or objectives, whereas, a Trust can be run with minimum of just 2 persons to fulfill their own objectives only; (b)in legal terms, a Society is governed by the Memorandum of Association and Rules and Regulations, whereas, a Trust needs only a Trust deed and its rules and regulations are not mandatory; (c)a Society is a democratic setup where the Governing Body members are elected, whereas a Trust does not have the election and the Board of Trustees who are hand-picked by the Managing Trustee can remain in their positions till their death or as long as they like. He would further state that the Society which is democratically formed is the apt organisation to fulfill the needs of such marginalised and impoverished PLHAs rather than being at the mercy and beck and call of a single Managing Trustee who would keep PLHAs under his/her own fold without listening them. A PLHA cannot become the member of the Board of Trustee unless the Managing Trustee permits and no administrative control is given to PLHA by the Trustees which is not the case in the Society. Since the Trust formed with a minimum of just 2 HIV positive persons does not fit into the concept of network, the Government have decided to allow the entities registered under the Societies Registration Act, 1975 by the impugned G.O., which does not require interference by this Court.

5.Mr.Veera Kathiravan, learned Senior Standing Counsel appearing for the 1st respondent would further state that the pursuant to the order of this Court dated 01.10.2020, an inspection was conducted in the petitioner's Trust and the inspection team reported some serious lapses namely, no document related to treatment adherence and counselling services, no record for addressing stigma and discrimination and no rental agreement or rental receipt was produced by the petitioner which are the major deviations which would run contrary to the purpose of DIC in the present G.O. Thus, he would pray for dismissal of the writ



6. The learned counsel for the 2nd respondent also reiterated the submissions made by the learned Senior Standing Counsel for the 1st respondent and would pray for dismissal of the writ petition.

7. Heard the learned counsel for the petitioner as well as the respondents and perused the records carefully.

8. A perusal of record shows that the Government have issued the impugned G.O. to establish 34 Drop in Centres in all 32 Districts in the State of Tamil Nadu and the purpose of Drop in Centres is to protect the welfare of the people living with HIV/AIDS and their families and to provide services such as, (a) Providing sustainable counselling and support services; (b) Organizing support group meetings (SGM); (c) Providing psychosocial support to PLHAs and their families; (d) Establishing linkages with care and support service providers; (e) Establishing linkages with Government Welfare Schemes; (f) Assisting people living with HIV/AIDS (PLHAs) in coping with issues; (g) Creating an enabling environment for obtaining services from the Government and private institutions. To achieve the said purpose, the Government thought the entities registered under the Societies Registration Act, 1975, fit to be Drop in Centres. The purpose for which such option had been chosen by the Government has been explained in detail by the 1st respondent in paragraph No.7 of his counter affidavit. The said portion is reproduced hereunder:

"7. I humbly submit that the HIV Positive Networks who are registered as Societies would undertake the DIC (Drop in Centres) project because, (a) a Society is an organized group of at-least 7 persons who are joined together for fulfilling a particular objective or objectives, whereas, a Trust can be run with minimum of just 2 persons to fulfill their own objectives only; (b) in legal terms, a Society is governed by the Memorandum of Association and Rules and Regulations, whereas, a Trust needs only a Trust deed and its rules and regulations are not mandatory, although a Trust can make its own for their internal functioning; (c) A Society is a democratic setup where the Governing Body members are elected, whereas a Trust does not have the election and the Board of Trustees who are hand-picked by the Managing Trustee can remain in their positions till their death or as long as they like and there is a single person control in the Trust."

This Court does not find any perversity in arriving such conclusion by the Government.

9. Further, it is also stated by the respondents that when the petitioner's Trust was inspected, serious lapses are found which are against for proper functioning of Drop in Centres and therefore, Trust cannot be considered for implementing the DIC



scheme. Without contradicting the same, the petitioner attempted to say that the organizations which have been selected in some other Districts have not satisfied the criteria for selection of Drop-in-centres. Therefore, the above contention of the petitioner cannot be countenanced

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10. More over, it is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive, unless the policy can be faulted on grounds of *mala fide*, unreasonableness, arbitrariness or unfairness etc. It is stated by the learned Senior Standing Counsel for the Government that as the Government decided to establish the Drop in Centres through the networks consisting of PLHAs who are registered as Societies under the Societies Registration Act, 1975, the said intention of the Government, being policy decision of the State, need not be found fault with/interfered with by this Court. In this case, as stated earlier, this Court does not find any arbitrariness in the decision of the Government. Hence, this Court is inclined to dismiss this writ petition

11. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

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To

1)The Secretary to Government,
State of Tamil Nadu,
Health & Family Welfare Department,
Fort St.George,
Chennai-600 009.

2)The Member Secretary,
Tamil Nadu State Aids Control Society,
No.417, Pantheon Road,
Egmore, Chennai-600 008.

W.P (MD)No.13271 of 2020
Dated : 17.09.2021

KS (CO)
KB (22.10.2021) 5P 3C