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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NOS.6123 & 6257 OF 2022

AND

W.M.P.NOS.6210, 6212, 6329 & 6334 OF 2022

Rise and Shine Children Charitable Trust,
Rep. By its Secretary P.Aravind Raj,
No.3/164, Velammal Classic City,
(Near Abdul Kalam Park),
Aandarkuppam Village,
Panchetty Post,
Ponneri - 601 204.

... Petitioner in
both W.P's

.Vs.

1. The District Collector,
Tiruvallur District,
Tiruvallur.
2. The Superintendent of Police,
Tiruvallur District,
Tiruvallur.
3. The District Child Protection Officer (Unit),
No.48, J.N.Road,
Tiruvallur,
Tiruvallur District - 602 001.
4. The President,
District Child Welfare Committee,
No.196/2, Plot No.873, TNHB,
Kakalur Bye-Pass Road,
Tiruvallur - 602 001.

... Respondents in
both W.P's

PRAYER IN W.P.NO.6123 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the Respondents, culminating in the 4th Respondent's



communication Ref.No.22/Ku.Na.Ku./2022, dated 22.02.2022, in and by which the Petitioner Trust was called upon to produce the 4 children, who are placed in the Children's home of Rise and Shine Children Charitable Home, at No.3/164, Velammal Classic City, (Near Abdul Kalam Park), Aandarkuppam Village, Panchetty Post, Ponneri - 601 204, before him, on or before 25.02.2022, quash the same.

PRAYER IN W.P.NO.6257 OF 2022:-

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the Respondents, culminating in the 4th Respondent's communication Ref.No.10/Ma.Ku.Pa., dated 10.02.2022, calling upon the Petitioner Trust to show cause as to why the Certificate of Registration granted to the Petitioner Trust to operate "Rise and Shine Children Charitable Trust", having its home/Office at No.3/164, Velammal Classic City, (Near Abdul Kalam Park), Aandarkuppam Village, Panchetty Post, Ponneri - 601 204, should not be cancelled, quash the same.

(In both W.P's)

For Petitioner : Mr.B.Harikrishnan

For Respondents : Mr.C.Jayaprakash
Government Advocate

For Commissioner : Mr.T.Mohan

COMMON ORDER

The petitioner is a registered trust that claims to be engaged in charitable activities. It was created on 15.03.2021 with the avowed objects of engaging in public, social and charitable purposes and holds requisite approvals under the provisions of Income Tax Act, 1961 as well. Its main object as per the deed of trust is to uplift the homeless and economically weaker sections of the population by providing them food, education, shelter and medical aid.

2. The petitioner applied and has been granted the following certifications by the statutory authorities:

(i) Sanitary certificate issued by the Department of Public Health and Preventive Medicines;



(ii) Certificate of registration to this effect that the quality management systems of the petitioner trust are found compliant with the requirement of ISO 9001-2015.

(iii) building fitness certificate from 21.06.2021 to 20.06.2024.

(iv) Certificate of registration in proceedings No.11810/D2/2021 issued by the Directorate of Social Defence, Chennai valid for 5 years.

(v) No objection certificate issued by the Tamil Nadu Fire and Rescue Services Department in proceedings bearing Ref.No.O-Mu-No.4095/A/2021 dated 01.07.2021.

3. The petitioner applied for and was granted a licence by the Tahsildar, Ponneri for use of its premises at No.3/164, Velammal Classic City, Near Abdul Kalam Park, Andarkuppam Village, Panchetti (P.O.), Ponneri Taluk, Thiruvallur District as a Childrens Home for the period 21.06.2021 to 20.06.2024.

4. It holds registration bearing CSR.No.0008370 issued by the Registrar of Companies, Ministry of Corporate Affairs, Delhi, permitting it to undertake CSR activities. It claims to collect donations only through banking channels and does not deal in cash.

5. The petitioner sought permission to house four children of single parents, all ailing from Tirupalaivanam Village, Near Pazhaverkadu, Thiruvallur District, who were found to be in dire need of basic necessities including education. Their parents were seeking alms and the parents of two children had also been found to be very sick.

6. The petitioner thus applied for and obtained permission in terms of Section 37(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'Act') from the 4th respondent, that is the District Child Welfare Committee (in short 'DCWC') and after obtaining consent from their parents had welcomed the children into the Home run by the trust.

7. Two of the children have thereafter been admitted in Government High School, Aandarkuppam, Thiruvallur District and other two in VijayadeviVidyala, Tachur, Thiruvallur District. The petitioner claims to have sufficient staff including a cook, who are all well remunerated to assist in the proper running of the home.

8. The details of the four children, their ages and their educational status as on date are set out below:



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i. Aravindan, son of Muthulakshmi, aged 7 years, studying in 1st Std, VijayadeviVidyalaya, Tachur;

ii. Nitish, son of Kushboo, aged 9 years, studying in IV Std, VijayadeviVidyalaya, Tachur;

iii. Palayam, son of Selvi, aged - years, studying in VI Std, Govt. High School, Aandarkuppam, Tachur;

iv. Selvam, son of Selvi, aged - years, studying in VII Std, Govt. High School, Aandarkuppam, Tachur;

v. Palayam & Selvam, are the children of Selvi, who has been diagnosed for advanced stage of T.B.'

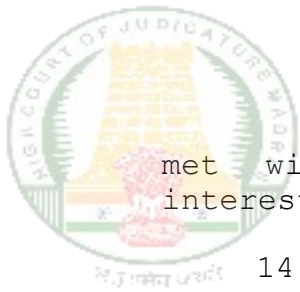
9. The petitioner thus would claim to be running the activities of the Home in a manner that is wholesome, compliant in all ways and well managed in all senses of the term without any irregularities or deficiencies in such management. The home has been running since October 2021.

10. While this is so, the Police appear to have visited the home on two occasions in January 2022 and also caused enquiry in regard to various details concerning the management including accounts, expenses, donations and other aspects. The petitioner was also required to visit the Police Station with various particulars, which request also complied with.

11. This Police verification appears to have been concluded adverse to the petitioner as it resulted in the issuance of a show cause notice dated 10.02.2022 by the District Child Protection Officer/R3 calling upon the petitioner to show cause why the certificate of registration issued by the Directorate of Social Defence not be cancelled. The report from the police alleges that the petitioner trust has collected huge donations from the public, that have been suppressed in its accounts. This allegation is denied.

12. Pending the show cause, the petitioner was also called upon to produce the four (4) children before R4 on 18.02.2022 under threat of coercive action. The petitioner replied on 16.02.2022 and 17.02.2022 narrating all the facts as noticed in the preceding paragraphs of this order.

13. The founder/trustee as well as the deponent to the affidavit filed in support of the writ petition i.e. the Secretary of the Trust, visited the office of the respondents to attempt to explain all the factual aspects upon which apprehensions had been expressed. They state however, that they



met with stiff resistance and the respondents were not interested in affording them a fair hearing.

14. While this is so, the petitioner was once again called upon to produce the children before him on or before 25.02.2022 under threat of coercive action. The children also appear to have been produced. This was followed by a detailed response/ explanation tendered on 24.02.2022 before the respondent authorities. The sum and substance of the explanations were to point out the proper working of the trust and also to convince the authorities of the fact that there was nothing untoward that was going on in the Home.

15. The petitioner has been given to understand that it is on the basis of an anonymous complaint that the present impugned action is being taken. This apprehension is borne out by the counter filed by the submissions of the Government Advocate on behalf of the respondents.

16. Mr.C.Jayaprakash, learned Government Advocate has circulated a copy of the complaint, which has been filed by the Bharathiya Janatha Katchi, Tamil Nadu, one N.L.Nagaraj, raising serious allegations about the working of the petitioner trust. Parawise remarks have also been obtained to the effect that the impugned action has been taken on the basis of the complaint filed by the local politician.

17. Since, in my view, this is a matter of substantial importance, this Court has requested Mr.Mohan, learned counsel, to visit the premises, converse with the children and submit a report to assist the exercise of fact finding by this Court in regard to how the home was managed and administered, and more importantly, how the children were being treated and what the prevailing conditions were.

18. A report has been filed by him under cover of memo dated 21.03.2022. The visit itself by the learned Commissioner a surprise visit, which was as the Court had intended. The rapid inspection report running to six pages is also accompanied by a report in format as set out under the Act for 'Mapping and review of child care instructions under the Juvenile Justice (Care and Protection of Children) Act, 2000 and other homes' as well as photographs of the facilities and surroundings of the Home, a copy of the menu, and the time table for weekly activities.

19. In the hearing conducted today, Mr.Mohan would express his view based on his experience in inspecting and assessing several similar Homes, to the effect that this Home is one of the brightest and well maintained Homes that he has visited.



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Incidentally, he has been appointed as amicus curie in a *Suo Motu* Public Interest Litigation (WP.No.4430 of 2018, *Suo motu* PIL V. The State of Tamil Nadu and others) for monitoring of Welfare Homes set up for protection of children under the Juvenile Justice Act.

20. In the course of that assignment, he had had occasion to visit many a Home, several indifferent and with poor conditions and some managed and administered well, with good conditions for the children. The petitioner trust, he states falls within the latter category, as on date.

21. As far as the auditing of funds is concerned, this Court had not directed an audit since the immediate purpose was to ensure the security and well-being of the children. A worrisome aspect that has been flagged by learned Commissioner, relates to the frequent visits by the police and their intervention in the management of the firm. His report of the Commissioner states that the police have visited the premises five times since January 2022, on an average, once a week and once thereafter.

22. The CBCID has also inspected the premises twice. The children have been produced before the Child Welfare Committee on three occasions and the representatives of the Home have appeared before the Committee on five occasions. The Commissioner opines, and I agree categorically, that this is wholly excessive. Not a scrap of information has been placed before me to indicate any justification for an invasive enquiry of this nature.

23. While it is incumbent upon the authorities under the Act to ensure that all proper precautions are taken both under the Act and as required otherwise, to ensure proper protection of the children and management of the home, there should be a balance struck between what is necessary and what is excessive.

24. The authority should also bear in view the impact that such an intrusive enquiry will have upon the children themselves. After all, the purpose of placing the children in a home is to ensure some normalcy in their life. While mismanagement must be punished swiftly and with a heavy hand, there cannot be a fishing and roving enquiry as in the present case, that has every possibility of disrupt the even tenor of their young lives.

25. In the interests of completion, the Commissioner's report dated 21.03.2022 is annexed as an annexure to this order. WP.No.6123 of 2022 challenges notice dated 22.02.2022 calling upon the petitioner to produce the children before the authority. This notice has been complied with and the children



produced more than once before the authority. With this, the purpose of this writ petition stands achieved and recording the same, this writ petition is closed.

26. W.P.No.6257 of 2022 challenges show cause notice calling upon the Trust to explain why the certificate of registration granted to the Trust not be cancelled. The petitioner's responses to the notices are before the authorities. Let the petitioner appear on 28.04.2022 at 10.30 a m, for a detailed hearing in this regard and orders be passed by the respondents within a period of four (4) weeks thereafter bearing in mind the observations made in this order. A copy of the order, once passed, will be filed before the Registry.

27. W.P.No.6257 of 2022 is kept pending to be placed by the Registry before the Hon'ble the Chief Justice for appropriate orders on clubbing with WP.No.4430 of 2018. This is for the reason that the Children's Home in question has been set up only in October 2021, and does not form part of the Homes that are being monitored under the watchful eyes of the Bench.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1. The District Collector,
Tiruvallur District,
Tiruvallur.
2. The Superintendent of Police,
Tiruvallur District,
Tiruvallur.
3. The District Child Protection Officer (Unit),
No.48, J.N.Road, Tiruvallur,
Tiruvallur District - 602 001.
4. The President,
District Child Welfare Committee,
No.196/2, Plot No.873, TNHB,
Kakalur Bye-Pass Road,
Tiruvallur - 602 001.



Copy To:-

The Section Officer,
Writ Section,
High Court, Madras.

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+2ccs to Mr.B.Harikrishnan, Advocate, S.R.Nos.19555 & 19556

W.P.NOS.6123 & 6257 OF 2022 AND
W.M.P.NOS.6210, 6212, 6329 & 6334 OF 2022

BR(CO)
PBS/10/05/2022