



W.P.(MD)No.12338 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.12338 of 2010

and

M.P.(MD)No.1 of 2010

A.Rengasamy

... Petitioner

Vs.

1.The Inspector General,
Registration Department,
100, Santhome High Road,
Pattinapakkam, Chennai-600 028.

2.The Registrar,
Office of the District Registrar,
Virudhunagar District Virudhunagar.

3.State Rep. by its Secretary,
Department of Registration,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the amendment to the Tamil Nadu Societies

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Registration Act 1975 by the Tamil Nadu Societies Registration (Amendment) Act, 2010 as ultra vires the Constitution of India and consequently struck down the G.O.Ms.No.34 dated 30-03-2010.

For Petitioner : Mr.Henri Tiphagne
for Mr.A.John Vincent
For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

Writ of declaration on hand had been instituted to declare the amendment to the Tamil Nadu Societies Registration Act, 1975 (hereinafter referred to as 'the Act' for the sake of brevity) by the Tamil Nadu Societies Registration (Amendment) Act 2010 as *ultra vires* the Constitution of India and consequently struck down the G.O.Ms.No.34 dated 30-03-2010.

2.The petitioner is claiming to be the State General Secretary, National Human Rights Organization having registered office at 157/197, Thoppupatti Street, Rajapalayam, Virudhuangar District. The petitioner has narrated the good services made through his Organization for protecting the human rights.

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3.The issue raised in this writ petition is, whether the impugned amendment is causing infringement to the fundamental right of the petitioner to use the term “Human Rights Organization” registered by him under the provisions of the Act. Broadly, the legislative actions in amending the provisions of the Act may be challenged either on the ground of legislative competency or in violation of Part III of the Constitution of India.

4.No doubt, beyond the above grounds, there are certain exceptional circumstances, when the Court may intervene in the interest of justice or by considering the constitutional perspectives. In the present case, no such occasion arose before us, in view of the fact that the petitioner had challenged the amendment on the ground that he is prevented from using the term “Human Rights” as a name to be used as prefix to his organization registered under the Act.

5.Let us now consider the legislative competence, which is made clear from List II of the State List, wherein Item No.32 stipulates Incorporation,



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regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.” Therefore, the subject falls under the State List and the Act (Tamil Nadu Act 27 of 1975) is the State Act. Therefore there is no ambiguity in respect of powers of the State to issue amendments to the provisions of the Act.

6.The next ground is whether the amendment is causing infringement of the fundamental rights of citizen under Part III of the Constitution of India.

7.Article 19(1)(c) provides right to form associations or unions or cooperative societies. In the present case, the right to form an association and register such association under the provisions of the Act has not been taken away through the impugned amendment. That being so, there is no infringement and thus, this ground is to be held goes against the writ petitioner.

8.The legislative competence is undisputed and regarding the fundamental rights, the petitioner is at liberty to register the organization and



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provide services protecting the human rights of the citizens in general or to the people, where he resides.

9.Now the question arises for consideration is as to whether the naming of an organization would fall under Part III of the Constitution of India. With reference to the naming of an association, let us look into the provisions of the Act. Section 9(1) of the Act stipulates that no societies can be registered by name, which in the opinion of the Registrar is undesirable. Section 9(2)(c) of the Act stipulates that “ "Union " or " State " or “Commission” or “Forum” or “Council” (or Human Rights) or any word expressing or implying the sanction, approval or patronage of the Central or any State Government.” There is an object with reference to the amendment made to Section 9(2)(c).

10.Large scale registration of societies in the name of “Human Rights” may result in misguiding and misleading and more so there is a possibility of abuse. The Government thought fit to prevent any such abuse and made amendment to protect the purpose and object of human rights. Already the State is having Human Rights Commissions and the Union is having National Human



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Rights Commission. There are other branches of Human Rights Protection Organization by the Government and that being so, the amendment has been brought in to distinguish the private Associations and the Governmental Organisation, so that the people will not be misguided or confused.

11. Therefore, we are of the opinion that the amendment is falling within the ambit of reasonable restrictions as contemplated under Article 19(4) of the Constitution of India, wherein it is stated that “nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.”

12. The State thought that few Societies registered under the Act are abusing the term Human Rights to establish themselves to be an association under the State. Thus to avoid any such confusion, amendment was brought in and such an amendment would not cause any prejudice to the registration of Societies under the Act for the purpose of achieving their objects under their own bylaws.



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In other words, naming of an association by name 'Human Rights' would cause no prejudice or violation to the private organizations and their liberty to serve humanity is intact.

13.The tests of reasonableness qua Article 19 of the Constitution enunciated in the judgment reported in (2004) 1 SCC 712 (Dharam Dutt v. Union of India) and, in particular, the observation that the onus of demonstrating that the impugned legislation comes within the permissible constitutional limits and that the restriction imposed is reasonable would shift to the State upon a prima facie case of violation on such counts being made out. Paragraph 49 of the judgment is relevant and reads as follows:

“49.In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by Clause (1) of Article 19 of the Constitution, on a prima facie case of such violation having been made out, the onus would shift upon the respondent State to show that the legislation comes within the permissible limits of the most relevant out of Clauses (2) to (6) of Article 19 of the Constitution, and that the restriction is reasonable. The Constitutional Court would expect the State to place before it sufficient material justifying the restriction and its reasonability. On the State



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succeeding in bringing the restriction within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc., the onus of showing that restriction is unreasonable would shift back to the petitioner. Where the restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an on- going shifting process to be consciously observed by the court called upon to decide the constitutional validity of a legislation by reference to Article 19 of the Constitution. The questions: (i) Whether the right claimed is a fundamental right, (ii) whether the restriction is one contemplated by any of the Clauses (2) to (6) of Article 19, and (iii) whether the restriction is reasonable or unreasonable, are all questions which shall have to be decided by keeping in view the substance of the legislation and not being beguiled by the mere appearance of the legislation.”

14. Thus, we could arrive at an inevitable conclusion that the impugned amendment in the present writ petition is not causing infringement of any of the fundamental rights under Part III of the Constitution of India. Prohibition imposing on a particular name by the State cannot be construed as a fundamental right within the meaning of Part III of the Constitution of India.



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15. Accordingly, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
04.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Inspector General,
Registration Department,
100, Santhome High Road,
Pattinapakkam, Chennai-600 028.
2. The Registrar,
Office of the District Registrar,
Virudhunagar District Virudhunagar.
3. The Department of Registration,
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