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W.P.(MD)NO.19723 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19723 of 2018 AND
W.M.P.(MD)Nos.17508 & 17509 of 2018

Mother Mary Special School
for Mentally Retarded / Hostel
S.No.641/1A/1A, Angunagar,
Chettinaickenpatti Village, Dindigul West Taluk,
Dindigul District,
Rep. by its Correspondent / Managing Trustee,
Rachal Vinitharani ... Petitioner

Vs.

1. The Secretary to the Government,
Welfare of Differently Disabled
Persons (DAP-1) Department,
St. George Fort, Chennai.
2. The State Commissioner for Disabled
Commissionerate for Welfare of Differently Disabled
Lady Willington College Campus,
Chennai.
3. The District Differently Abled Welfare Officer,
Dindigul District,
Dindigul. ... Respondents

Prayer: Writ petition is filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorarified
Mandamus, to call for the records pertaining to the impugned



order passed by 1st respondent in G.O.(D)No.25, dated 22.03.2018 confirming the impugned order passed by the 2nd respondent vide his proceedings in Proc.2213/ST2/2017, dated 02.06.2017 and quash the same as illegal and consequently direct the respondents to restore the recognition and registration accorded to the petitioner's institution, namely, Mother Mary Special School for Mentally Retarded / Hostel at S.No.641/1A/1A Angunagar, Chettinaickanpatti Village, Dindigul West Taluk, Dindigul District.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The petitioner was running a special school and hostel for special children. The State Commissioner for Differently abled had issued proceedings dated 25.07.2016 granting permission to the petitioner subject to certain terms and conditions. In the institution run by the petitioner, there were



as many as 20 girl children and the remaining were boys.

Unfortunately, a 17 year old intellectually challenged girl child got impregnated on account of another intellectually challenged boy. In this regard, Crime No.19 of 2017 was registered on the file All Women police station, Dindigul. The authorities rightly took the view that on account of lapse on the part of the petitioner, the occurrence had taken place. The girl child eventually delivered a boy baby and it is now growing up elsewhere. Hence, the impugned order dated 02.06.2017 came to be passed by the State Commissioner for Differently Abled, Chennai, revoking the registration granted to the petitioner. Challenging the order passed under Section 52 of The Rights of Persons with Disabilities Act, 2016 the petitioner filed an appeal before the Government. The appeal was dismissed vide G.O.(D)No.25 Welfare of Differently Abled Persons (DAP-1) Department dated 22.03.2018. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



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4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He pointed out that the petitioner has to be squarely blamed for the occurrence and that therefore considering the gravity of breach, the impugned orders rightly came to be passed. He pointed out that both the orders are well reasoned and that therefore they do not warrant interference and pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. Section 51(2) of the Act provides for grant of certificate of registration. Section 52(1) provides for revocation of registration. It reads as follows:-

“ **Revocation of registration** - (1) The competent authority may, if it has reason to believe that the holder of a certificate of registration granted under sub-section(2) of section 51 has,—

(a) made a statement in relation to any application for the issue or renewal of the



certificate which is incorrect or false in material particulars; or

(b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted, it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

Provided that no such order shall be made until an opportunity is given to the holder of the certificate to show cause as to why the certificate of registration shall not be revoked.”

The proviso clearly contemplates granting an opportunity to any holder of the certificate. It expects the authority to hold an enquiry. In this case, neither notice was issued nor enquiry was held. The appellate authority also failed to take note of the same. Hence, the order impugned deserves to be set aside on the ground of violation of the aforesaid statutory mandate.

7. Normally, whenever an order is set aside on the ground of violation of principles of natural justice, the matter is remitted to the file of the authority. In this case, such remand need not be made. The learned counsel appearing for the petitioner on instruction states that the petitioner will run



the special school/ hostel only for boys. The learned Additional Government Pleader would state that the statute does not contemplate gender distinction if the institutions are for those below 14 years.

8. The question of proportionality will have to be taken note of. The petitioner has not been running her institution for the last five years and more. For the lapse committed by the petitioner, the petitioner has suffered enough and more. The petitioner is having all the requisite infrastructural facilities and that is why, the second respondent had earlier granted registration of the petitioner.

9. The learned Additional Government Pleader would further submit that the registration period would be only for three years and the said period has since expired. The petitioner therefore has to apply afresh. Since the cancellation order was passed when the registration was in subsistence, the petitioner need not apply afresh. Instead the petitioner can apply for renewal under Section 51(5) of the Act. As and when the application for renewal is submitted, the second



respondent shall pass an appropriate order within a period of sixty days thereafter. Once renewal is granted, it is open to the petitioner to reopen the institution. The second respondent may refuse renewal on the ground that some statutory requirements are not fulfilled. In other words, the occurrence which led to cancellation of the registration will not be put against the petitioner. It is of course open to the second respondent to stipulate further conditions to ensure proper care of all the inmates. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

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

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G.R.SWAMINATHAN,J.

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