



WEB COPY



WP No.34298 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HON'BLE MR.D. KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

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1.Dr.C.S.Rex Sargunam

2.Dr.K.Swaminathan

... Petitioners

versus

1.The State of Tamil Nadu

Represented by its Secretary,
Commercial Taxes and Registration Department,
Fort St.George, Chennai-600 009.

2.The State of Tamil Nadu,

Represented by its Secretary,
Industries Department,
Fort St.George, Chennai 600 009.

3.The Inspector General of Registration,

No.100, Santhome High Road,
Chennai- 600 028.

4.Voluntary Health Services,

Represented by its Honorary Secretary,
SH 49A, Pallipattu,
Rajiv Gandhi Salai, Taramani, Chennai-600 113. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus calling for the records of the Government Order in G.O.Ms.No.1089, Industries Department dated 05.08.1981 passed by the second respondent and quash the same and consequentially direct the respondents to ensure that the Society functions in the terms of the Bye Law of the Society.

For the Petitioners	:Mr.M.Balasubramaniam
For the Respondents	:Mr.A.Edwin Prabakar State Government Pleader for respondents 1 to 3 Mr.T.R.Raja Gopal Senior Counsel for Mrs.Veena Suresh for fourth respondent

ORDER

(Made by the Hon'ble Acting Chief Justice)

This writ petition is filed challenging the Government Order in G.O.Ms.No.1089, Industries Department dated 05.08.1981 passed by the second respondent and consequentially direct the respondents to ensure that



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the Society functions in the terms of the Bye Law of the Society.

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2. According to the petitioners, on 25.03.1961, the Government of Tamil Nadu, had entered into an agreement with the fourth respondent and registered it as Doc.No.2193, dated 13.8.1981, for the sole purpose of creating a medical centre, for medical education and research. The agreement is for a period of 99 years. This agreement specifically states that the land on which the Hospital and the Research Centre is situated, was acquired and given to Voluntary Health Services (VHS), by the Government of Tamil Nadu and the Government.

3. According to the writ petitioners, the second respondent Government, in exercise of its power under Section 54 of the Tamil Nadu Societies Registration Act, has passed G.O.Ms.No.1089, Industries Department dated 05.08.1981, granting exemption to the fourth respondent/Voluntary Health Services, from the application of Section 15(3) of the Tamil Nadu Societies Registration Act of 1975.

4. Section 15(3) of the Tamil Nadu Societies Registration Act, 1975, reads as under:

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" The members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat"

5. Challenging the aforesaid Government Order dated 05.08.1981, the petitioners have filed the present writ petition.

6. Learned counsel for the petitioners submits that by virtue of the exemption granted by the Government from the application of Section 15(3) of the Tamil Nadu Societies Registration Act, 1975, no meeting was conveyed under Section 15(3) of the said Act by the fourth respondent. Further, the hospital is running in loss due to mismanagement of the fourth respondent and there is no accounting liability for any such loss sustained to the hospital due to their mismanagement. Further, taking advantage of the said exemption granted under Section 15(3) of the Act, the Management is making serious violation of laws and financial regulation. Hence, he seeks to allow the writ petition.

7. It is brought to the notice of this Court that the first petitioner has



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already filed WP No.4184 of 2012 for a direction to the Government to consider his representation in the light of the main object of the fourth respondent mentioned in the Memorandum of Association. The writ court, by order dated 01.02.2013 had dismissed the writ petition. In paragraph 18 of the order, the writ court has held as follows:

"18. As noted already, the petitioner is neither a member of the society nor a member of the Trust which runs the hospital. He is not even a member of the Central Committee which guides the running of the hospital. As contended by the respondents, the Central Committee comprise of several leading personalities including the Accountant General, Advocate General of Tamil Nadu and the District Collector. If there is any irregularity, it will not got out of their attention. Unless the petitioner is the member of the society, he cannot compel an action to be initiated on the representation made by him. Similarly, if a public charitable trust is not functioning for the purpose for which it has been established, the only remedy is to correct such a trust by taking a recourse to Section 92 C.P.C by filing a scheme suit. Even for filing such a suit, it requires two persons to apply for the same and the court must grant leave taking into account the interest shown by such applicant."

8. Aggrieved by the said order, the first petitioner had filed writ appeal



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in WA No.972 of 2013 and the same was dismissed by the appellate court.

Therefore, the earlier litigation raised by the first petitioner has reached its finality. The said observation made in the earlier writ petition has also been taken on record.

9. Now, the petitioners have again filed the present writ petition under the guise of Probono litigation, challenging the aforesaid Government Order dated 05.08.1981. Further, no details have been furnished in the present writ petition to prove their contention that the fourth respondent has rendered inhuman service to the public. Hence, the petitioners have not satisfied any locus standi in filing the public interest litigation.

10. On considering the submissions of the first petitioner, the writ court has passed an order to resort his remedy before appropriate forum and the same was confirmed by the Division Bench of this Court. Without resorting his remedy before appropriate forum, the first petitioner has filed the present writ petition in the guise of probona litigation, challenging the aforesaid Government Order. dated 05.08.1981. Hence, the same cannot be



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entertained.

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11. In view of the above, the writ petition stands dismissed. It is for the petitioners to seek their remedy before the appropriate forum, if so advised. There shall be no order as to costs. Consequently, WMP No.33754 of 2022 is closed.

(D.K.K., ACJ.) (K.B., J.)
22.07.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

To

1.The Secretary,
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2.The Secretary,
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3.The Inspector General of Registration,
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THE HON'BLE ACTING CHIEF JUSTICE
and
K.KUMARESH BABU,J.

(mrn)

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