

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 1st OF NOVEMBER, 2022

WRIT PETITION No. 11109 of 2021

BETWEEN:-

1. **EVANGELICAL LUTHERAN CHURCH IN MP (ELC IN MP) A SOCIETY REGISTERED UNDER THE PROVISIONS OF SOCIETY REGISTRIKARAN ADHINIYAM, 1973 REGISTERED OFFICE - LUTHER BHAWAN PO BOX - 30, CHHINDWARA (MP) THROUGH S/O BRIJNANDAN SAHAY, AGED ABOUT 63 YEARS, OCCUPATION: SECRETARY IN ELC IN MP R/O LUTHER BHAWAN, PO BOX 30, CHHINDWARA (M.P.) (MADHYA PRADESH)**
2. **ASHOK CHOUKSEY S/O SHANKARLAL CHOUKSEY, AGED ABOUT 72 YEARS, OCCUPATION: EXECUTIVE MEMBER, ELC IN MP LUTHER BHAWAN, CHHINDWARA (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI R. N. SINGH - SENIOR ADVOCATE WITH SHRI SIDDHARTH GULATEE - ADVOCATE).

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY DEPARTMENT OF INDUSTRY POLICY AND INVESTMENT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. REGISTRAR FIRMS AND SOCIETIES M.P. D WING, 1ST FLOOR, VIDHYANCHAL BHAWAN, BHOPAL (MADHYA PRADESH)
3. ASSISTANT REGISTRAR FIRMS AND SOCIETIES JABALPUR DIVISION JABALPUR UDHYOG BHAWAN, BLOCK A, 4TH FLOOR, NEAR KATANGA TV TOWER, JABALPUR) (MADHYA PRADESH)
4. M.L. KUKDAPE, AUDITOR AND ENQUIRY OFFICER OFFICE OF ASSISTANT REGISTRAR FIRMS AND SOCIETIES JABALPUR DIVISION UDHYOG BHAWAN WING -A FOURTH FLOOR, KATANGA TV TOWER, JABALPUR (MADHYA PRADESH)
5. SMT.LOVINA KARKETTA W/O NOT KNOWN CHURCH COMPOUND CHHINDWARA (MADHYA PRADESH)
6. RANJEET KUMAR LUKAS S/O LATE RAVINDRA LUKAS, AGED ABOUT 46 YEARS, WARD NO. 39 SHANTIPURA NAGPUR ROAD (MADHYA PRADESH)
7. GAURAV STEPHEN S/O SHARAD STEPHEN, AGED ABOUT 27 YEARS, CHURCH COMPOUND NAGPUR ROAD CHHINDWARA (MADHYA PRADESH)
8. VINAY DAVIS S/O LATE PETER DAVIS, AGED ABOUT 36 YEARS, JR.MIG 83 OLD SUBHASHNAGAR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI S. S. CHOUHAN -GOVERNMENT ADVOCATE FOR RESPONDENTS NO.1 TO 3. SHRI HARPREET RUPRAH - ADVOCATE FOR INTERVENORS)

This petition coming on for orders this day, Hon'ble Shri Justice Ravi Malimath, Chief Justice passed the following:

ORDER

The case of the petitioner- Society is that it claims to be a registered Society under the Madhya Pradesh Society Registrkaran Adhiniyam, 1973 (for short "the Adhiniyam, 1973"). That it is running many educational institutions as well as hospitals in the State of M.P. It conducts various charitable activities.

2. That various disputes arose between the members of the petitioner- Society. That one Smt. Laveena Kerketta, preferred a complaint on 10.03.2021 to the Hon'ble Minister, State of M.P. Various allegations were made about the irregularities being conducted by the petitioner- Society. The Hon'ble Minister by his communication vide Annexure P/3 to the Principal Secretary, State of M.P. brought to the notice that there was an F.I.R. lodged against the petitioner-Society for offences punishable under Sections 420 and 467 of the I.P.C. which was registered on 16.02.2021. Hence, while forwarding the copy of the letter, the Principal Secretary was asked to look into the matter and do the needful. As a consequence whereof, vide communication Annexure P/4 dated 23.03.2021, the O.S.D. to the Hon'ble Minister wrote a letter to the Registrar of the Society asking him to intimate as to what happened to the letter of the Minister dated 15.03.2021 vide Annexure P/3.

3. Thereafter, the Registrar issued an order vide Annexure P/5 dated 02.06.2021 in exercise of the powers contained under Section 31(1) of the Adhiniyam, 1973. Thereafter the enquiry commenced. A communication was addressed by the Inquiry Officer to the petitioner-Society vide Annexure P/7 dated 10.06.2021 calling for various

documents required for the purposes of the enquiry. Questioning the same, the instant writ petition is filed.

4. Vide an ex parte interim order dated 30.06.2021 passed by this Court, the learned Single Judge stayed the operation of the impugned order dated 02.06.2021. Thereafter the respondents have put an appearance and filed an application for vacating stay amongst other applications.

5. Shri R.N. Singh, learned senior counsel appearing for counsel for petitioner- Society submits that the impugned order initiating an enquiry against the petitioner - Society is beyond the authorization of law. That the Registrar had no power to pass the impugned order. That apparently, as could be seen from the facts narrated by the petitioner - Society, the entire action of the respondent/Registrar in issuing the order under Section 32 of the Adhiniyam, 1997 is only at the behest of the concerned Minister. Therefore, it is the Minister alone who is interested in these proceedings. That because of the action of the Minister the Registrar has gone about initiating the enquiry but for himself the Registrar would not have initiated any proceedings against the petitioner - Society.

6. The same is disputed by Shri Manoj Sharma, learned senior counsel appearing for appellants in connected Writ Appeal No.320 of 2022. He submits that the exercise of powers by the Registrar under Section 32 of the Adhiniyam, 1973 is well within the four corners of law. That the Registrar having *prima facie* found various illegalities and irregularities in the functioning of the petitioner - Society, has decided to hold an enquiry. Other than holding an enquiry, no adverse order as such has been passed by him. Therefore, it is only after

an enquiry is completed that the truth of the matter will come out. The only intention of the petitioner - Society is to stall the enquiry against them which is inappropriate. Hence, he pleads that the petition be dismissed.

7. Heard learned counsels.

8. The bone of contention of the petitioner - Society is that the Registrar exceeded his powers as vested in him under Section 32(1) of the Adhiniyam, 1997. Section 32 (1) of the Adhiniyam, 1973 reads as follows:-

“32. Enquiry and settlement of disputes. - (1)
The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.”

9. It is herein that the learned counsel for the petitioner - Society contends that there is absolutely no material to indicate as to why and in what manner the enquiry has been initiated. In the absence of any material, no enquiry could be initiated under Section 32 of the Adhiniyam, 1973.

10. However, the plain reading of Section 32 does not indicate so. It only indicates that the Registrar on his own motion or on an application may initiate an enquiry. Therefore, the *suo motu* power granted to the Registrar is bereft of any finding or material or any other action prior to exercising of powers under Section 32 of the Adhiniyam, 1973. It is apt to indicate that in various enactments, the powers are vested only after certain material is collected or on the

satisfaction of the concerned authority that action could be initiated. However, so far as Section 32 of the Adhiniyam, 1973 is concerned, no such requirement is postulated. The requirement of having any material or any other reason before initiation of the proceedings is absent under Section 32. Section 32 of the Adhiniyam, 1973 only postulates a *suo motu* power to the Registrar. This is probably intended in order to hold an enquiry with regard to the constitution, working and financial conditions of a Society. Ostensibly, the same may have been initiated in view of the fact that an F.I.R. has only been lodged against the petitioner - Society. Therefore, the Registrar may have thought it appropriate to initiate such an enquiry. Therefore, we find that the collection of any material is not necessary before any enquiry is initiated.

11. The further contention is that such an action has been entertained by the Registrar only because of the insistence of the concerned Minister.

12. We have considered the relevant document. Annexure P/3 is a letter written by the Minister to the Principal Secretary, State of M.P. intimating him about the complaint received by him as well as the F.I.R. pending against the petitioner - Society and therefore, he sought to know what has happened in the said matter. Thereafter, the O.S.D. to the Minister wrote a letter to the Registrar intimating him about the progress, if any, made in pursuance to the Minister's letter. Therefore, it is pleaded that this amounts to a direction to the Registrar to initiate the proceedings.

13. However, on considering both these documents including the complaint in terms of Annexure P/2, we do not find that there is any

pressure, coercion or otherwise by the Minister in order to initiate the proceedings. All that the Minister has done is to intimate about the pending F.I.R. lodged against the petitioner - Society. The subsequent letter is to find out as to what happened to the letter written by the Minister. This we do not find as an interference in the statutory duties of the Registrar. In case there was any communication where the Minister or anybody else would have directed the Registrar to perform a particular act or not to perform a particular act that would amount to interfering in the normal functioning of the authority. This, we do not find either in Annexures P/3 or P/4. In fact, there is not even a whisper in both the documents with regard to the initiation of an enquiry. The only information sought for is as to what has happened to the complaint made against the petitioner - Society and the further proceedings pertaining to the F.I.R. lodged. Therefore, it would not be proper to conclude that there was any interference as such by the concerned Minister in the exercise of the powers under Section 32 of the Adhiniyam, 1973 by the Registrar.

14. Hence, we are of the view that initiation of the proceedings by the Registrar under Section 32 of the Adhiniyam, 1973 is just and proper and is bereft of any interference by the Minister or by any other third person.

15. I.A. No. 7022 of 2021 is an application seeking for seizing original records during the pendency of this writ petition. Since the writ petition is disposed off, we do not find it necessary to pass any order. The Registrar is always at liberty to pass an appropriate order with regard to seizing of the original records.

16. Hence, for all the aforesaid reasons, the writ petition being devoid of merit is accordingly dismissed.

**(RAVI MALIMATH)
CHIEF JUSTICE**

**(VISHAL MISHRA)
JUDGE**

MSP