



W.P.No.9111 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.9111 of 2024

M.B.Sujith

... Petitioner

Vs.

1.The Secretary,
Bar Council of Tamil Nadu and Puducherry,
Bar Council Building, High Court Campus,
Chennai – 600 104.

2.Ganesan.S

3.The Assistant Commissioner,
Directorate of Revenue Intelligence,
Chennai VII Commissioner ate (Air Cargo),
New Customs House, Meenambakkam,
Chennai – 600 027.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to make thorough enquiry on the petitioner's representation dated 22.03.2024 and consequently take appropriate action on the same.



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For Petitioner : Mr.K.Mahalingam
For R1 : Mr.M.R.Jothimanian
For R2 : Mrs.S.P.Aarthi

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The writ of mandamus has been instituted to direct the 1st respondent to conduct an enquiry based on the representation submitted by the writ petitioner on 22.03.2024 and initiate appropriate action.

2. The complaint registered by the petitioner against the 2nd respondent / Mr.S.Ganesan on 22.03.2024 reveals that a criminal case has been registered against the 2nd respondent by the Assistant Commissioner of Customs, Prosecution Unit, Air Cargo Commissionerate. The charge against the 2nd respondent was smuggling of Gold Bars inside the Airport campus. The Discharge Petition filed by the 2nd respondent was allowed. The Assistant Commissioner of Customs preferred CrI.R.C.No.372 of 2022 and the High Court of Madras allowed the Criminal Revision Case on 14.07.2022. Consequently, the criminal case registered against the 2nd respondent was



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restored on file. Now the said case is pending on the file of Learned Judicial Magistrate, Special Court for Customs, Alandur.

3. During the interregnum period of discharge and the order of the High Court in Crl.R.C.No.372 of 2022, the 2nd respondent enrolled himself as an Advocate in the Bar Council of Tamil Nadu and Puducherry.

4. Mrs.S.P.Aarthi, learned counsel for the 2nd respondent would submit that at the time of submission of application for enrolment as an Advocate no criminal case was pending against the 2nd respondent. Therefore, the enrolment of the 2nd respondent as an Advocate cannot be said to be invalid nor the Bar Council can initiate actions.

5. The learned counsel for the petitioner further raised an allegation against the 2nd respondent that he is now practising as a lawyer in the Madras High Court and other Courts. He is using the title “ Lieutenant Colonel” as prefix to his name in all cases filings, vakalatnama, etc. His name has been published in the cause list as “ Lieutenant Colonel S.Ganesan”. Using the title “ Lieutenant Colonel” as prefix to his name is not permitted and he is abusing his position as a retired Lieutenant Colonel. The complaint filed against such



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abuse before the Bar Council of Tamil Nadu and Puducherry has not been looked into. Thus, the petitioner is constrained to move the present writ petition.

6. Mrs.S.P.Aarthi, learned counsel for the 2nd respondent would oppose by stating that the enrolment of the 2nd respondent as an Advocate was properly made and usage of title “Lieutenant Colonel” as prefix is not prohibited under Article 18 (1) of the Constitution of India. Therefore, no prohibition for using the title “Lieutenant Colonel” as prefix to his name in vakalat and case filings can be made as there is no impediment.

7. Mr.K.Mahalingam, the learned counsel for the petitioner would submit that by using the prefix Lieutenant Colonel, the 2nd respondent is threatening the petitioner in Court campus. Therefore, actions are to be initiated.

8. We have examined the usage of title “Lieutenant Colonel” as prefix his his name in case filings in Courts and in vakalatnama and in Court proceedings.



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9. Article 18(1) stipulates “No title, not being a military or academic distinction, shall be conferred by the State”. The Constitution prohibited conferment of title by the State in order to be bridled with the colonial practice of awarding title of nobility. Article 18 does not speak about usage of military title or title of academic distinction as prefix or suffix.

10. Usage of title or distinction as prefix or suffix has been elaborately considered by the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Balaji Raghavan vs. Union of India*** reported in **(1996) 1 Supreme Court Cases 361**.

11. Article 18 denotes Abolition of titles but not about usage of title as prefix or suffix with a name. The Constitution Bench had an occasion to consider about abolition of titles as enumerated under Article 18 of the Constitution of India and about the usage of military title or academic distinction.

12. Article 18(1) prohibits conferment of titles by the State with exemption of military title and academic distinctions. The Court observed that “title” means a title of honour, rank, function or office in which there is a



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distinctive appellation. Since military and academic distinctions, such as, General, Colonel, Professor, Mahavir Chakra, B.A., etc. do carry suffixes or prefixes, the framers of the Constitution, by way of abundant caution, expressly mentioned that they would be exempted.

13. Amicus curiae appointed by the Constitution Bench advanced arguments stating that parts of discussions in the Constituent Assembly before submitting that it is clear that the Constitution does envisage a situation where meritorious services rendered by individuals are to be recognised by the State, through conferment of awards. However, to avoid the criticism of creating a separate class, it needs to be ensured that these awards are not used as prefixes or suffixes.

14. Accordingly, the word “military or academic distinction” had been used by way of abundant caution. It was not meant to prevent the State from honouring or recognising meritorious or humanitarian services rendered by citizens. Even at a meeting, Mr.K.T.Shah formally proposed the abolition of titles and the privileged class of title-holders. In the final report of the Sub-Committee, the relevant part of Clause 8 read as “No titles except those denoting an office or a profession shall be conferred by the Union”.



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WEB COPY 15. On 30.04.1947, this Clause was discussed in the Constituent Assembly. While moving the Clause, Mr.Vallabhbhai Patel observed that titles were often being abused for corrupting the public life of the country and, therefore, it was better that their abolition should be provided as a fundamental right. He informed the Assembly that it had been decided to drop the word 'heritable' as it had become a matter of controversy. While moving the amendment, Mr.M.R.Masani stated:

“This will mean that the free Indian State will not confer any titles of any kind, whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a free India.

While supporting the amendment, Sri Prakasa stated:

Sir, I should like to make it plain that this



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clause does not prohibit even the State from bestowing a proper honour. We are distinguishing between titles and honours. A title is something that hangs to one's name. I understand it is a British innovation. Other States also honour their citizens for good work but those citizens do not necessarily hang their titles to their names as people in Britain or British-governed parts of the world do. That is all that this clause seeks to do. ... We want to abolish this corroding, corrupting practice which makes individuals go about currying favour with authority to get particular distinctions."

23. The Drafting Committee and its Special Committee, after considering the various comments, suggestions and amendments received on Draft Article 12, suggested further amendments. The Constitutional Advisor, Sir B.N. Rau, supported these new amendments and stated:

"Presumably it is not intended that titles such as 'Field Marshal', 'Admiral', 'Air Marshal', 'Chief Justice' or 'Doctor' indicating an office or profession, should be discontinued. It may be pointed out that the term 'State' as defined includes 'all local or other authorities within the



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territory of India'. Nor, presumably, is it intended to prohibit the award of medals or decorations for gallantry, humanitarian work, etc. not carrying any title".

The Drafting Committee redrafted Article 12(1) to read:

"Hereditary titles or other privileges of birth shall not be conferred by the State."

24. It is important to note that when, on 30.11.1948, Draft Article 12 came up for final discussion before the Constituent Assembly, Dr.Ambedkar did not move the amendment for redrafting Clause (1) of Draft Article 12 which has earlier been accepted by the Drafting Committee. The Draft article, as presented to the Assembly, read as it was framed originally by the Drafting Committee:

"(1) No title shall be conferred by the State."

Mr. T.T. Krishnamachari sought to add the words "not being a military or academic distinction" after the word title in Clause (1). He felt that this was necessary, firstly, because certain types of titles had to be permitted, the Government having,



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for example, already decided to confer certain military distinctions; secondly, because the State might decide to revive academic titles like Mahamahopadhyaya, and lastly, because a university might not be completely divorced from a state in view of the definition of the latter in draft article 7. (Article 12 of the Constitution).

16. Paragraph 28 of the Constitution Bench judgment reads that ***“However, the framers did not intend that the State should not officially recognise merit or work of an extraordinary nature. They, however, mandated that the honour conferred by the State should not be used as suffixes or prefixes, i.e., as titles, by the recipients”.***

17. Award of military or academic distinction, which is not abolished under Article 18(1) is no way connected with the usage of title or academic distinction as prefixes or suffixes with the name. Award of rank in military services is not prohibited but usage of the rank / title as prefixes and suffixes is prohibited for legal profession.

18. The retired Army Officers, Naval Officers, Air Force Officers or



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persons with academic distinctions are enrolling their names as an Advocate in the Bar Councils. Once they enrolled as an Advocate in the Bar Council and their names are in the rolls, they are bound by the Advocates Act and Bar Council of India Rules. Enrolment of name cannot be made with prefixes or suffixes of military or academic distinctions.

19. Rule 23(a) Part IX General Principles to be Followed by State Bar Councils and The Bar Council of India Rules for Supervision and Control by the Bar Council of India, reads as under;

“23. (a) The names of advocates shall be entered in the rolls without suffixes, prefixes, titles or degrees. In the case of person who has taken a degree in law from any University, the name shall be the same as entered in the degree or other certificate granted by the University; in the case of a Barrister, as in the certificate of call to the Bar;

In the case of a Vakil, Pleader or Attorney or Mukhtar, as it is in certificate of entry as such Vakil, Pleader or Attorney or Mukhtar and in the case of any person previously enrolled as an advocate, whether he holds a degree in law or not, as in the certificate of such admission.



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In the case of any person not falling under any of the above categories, the name shall be such as the State Council or the Enrolment Committee may determine.

(b) The name as entered in the roll of the State Council shall not be altered in any respect except when;

(i) on an application for that purpose, the State Council accords its permission;

(ii) a notice thereof is thereafter affixed on the notice board of the State Council and published in the local gazette in one issue or in a local English newspaper as the State Council may specify and

(iii) the applicant defrays all the necessary costs thereof.

(c) Every State Council shall forthwith communicate to the Council, the change if any in the name of any advocate on its rolls.”

20. Importantly, the Government of India, Ministry of Defence in its proceeding No.G.28(1/82/D(Coord)) dated 27th, July, 1983 issued



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instructions for use of military ranks. The letter is extracted here under:

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No.F.28 (1/82/D/(Coord))

Government of India,
Ministry of Defence,
New Delhi, the 27th July, 1983

To

*The Chief Secretaries of all States
Government and Union Territories*

Subject : Use of Military Ranks

Sir,

I am directed to refer to this ministry's letter No. 28/(1)/76/D (Coord), dated the 19th November, 1976 on the above subject and to say that the guidelines laid down earlier for the use of military ranks by the retired service officers, etc. have been reviewed. In supersession of the existing instructions on the subject, it has been decided that, apart from serving officers of the regular Armed Forces, only the following categories of persons are entitled to use Military ranks with their names in the manner indicated below, in each case:-

(A) Use of Military Ranks by Officers of Regular Armed Forces After Release etc.

(a) Regular/Permanent commissioned officers who retired with pension and gratuity, eg Brig A, AVSM (Retd), Air Cmd, B (Retd), Cmd C, VrC (Retd).

(b) Officers at (a) above who are granted honorary ranks after retirement may indicate their honorary rank in parentheses subsequent to their actual rank, eg. Brig (Hony Ma) Gen) A, AVSM (Retd) etc. During conversation such officers may be addressed as General or Admiral, etc.

(c) Junior commissioned officers granted Honorary Commissioned on retirement eg. Sub Ma (Hony Lt) B (Retd).



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(B) Use of Military Ranks By Junior Commissioned Officers While in Service

Sub Maj (Hony Lt) B.

(C) Non-Commissioned Officers.

Non-Commissioned Officers granted honorary rank of Naib Risaldar | Naib Subedar on retirement, eg. Honorary Naib Resaldar | Naib Subedar D (Retd).

(D) (i) Senior commissioned officers (Branch Liut) granted Honorary rank of Lieutenant at the time of retirement eg. Honorary Lieutenant B (Retd).

(ii) Chief petty Officers granted Honorary rank of Commissioned Officers (Branch Liut) at the time of retirement, eg. Honorary Commissioned Officers (Branch Liut) C (Retd).

(iii) Master chief Petty officers and Chief Petty Officers granted Honorary Commission while in service or on retirement, eg. A MCPO I (Hony Sub Lt) (Retd).

(iv) Master Warrant Officers/Warrant Officers granted Honorary Commissioned while in service of Honorary ranks on retirement, i.e, MWO/WO (Honorary Flying Officer A, MWOWO (Honorary Flight Lieutenant) B and Honorary Flying Officer A (Retd), Honorary Flight Lieutenant B (Retd), respectively.

(E) Use of Military Rank by Members of Former State Forces

(i) Officers of the former Indian State Forces who held regular Commission in those forces, eg Capt A (Retd) (with the name of the State in brackets).

(ii) Officers and others granted Honorary ranks by rulers of former princely States before integration with the Union, eg. Honorary Major B (with the name of the State in brackets).

(F) Use of Military Rank by Members of Territorial Army, National Cadet, Auxiliary Air Force.



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Serving Officers of the Territorial Army, Auxiliary Air Force and the National Cadet Corps, eg. Lt Col E(TA); Flt Lt A (Aux AF); Capt E (NCC).

(G) Use of Military Ranks by Members of Reserves

Officers of the Reserves including Emergency Liut of Indian Navy, eg. Capt F (Reserve) ; Lt Cdr D (IN) (Emergency List) ; Flt Lt D (Reserve)

(H) Use of Military Ranks by Rulers of Former Indian States and Others Granted Honorary Commissions.

(i) Ex-Rulers of former Indian States granted Honorary Commission, eg. Major General G.

(ii) Others granted Honorary Commission, eg. (Hony) Major C.

2. Non-regular officers (eg. those who had held Temporary, short Service or Emergency Commission etc.) after release are not entitled to use any military rank. However, retired/released officers of the Territorial Army and Army Postal Services Corps can use their military ranks with the specific permission of Government.

3. Honorary military rank conferred by the foreign Government on an Indian citizen will, save in very exceptional circumstances, not be recognised for official purposes.

4. I am also to request that it should be ensured that the correct ranks are used in official correspondences, communiques and press releases in regard to retired/released officers or officers holding honorary ranks and that in cases where use of rank after retirement etc. is not permissible, the officer is referred to as Shri A, etc. Wide publicity may be given to these instruction so as to prevent misuse of military ranks by non-entitled persons.

Yours Faithfully,



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20. The concluding paragraph of the above letter would unambiguously indicate that in regard to retired / released officers or officers holding honorary ranks and that in cases where use of rank after retirement etc. is not permissible, the officer is referred to as Shri A, etc.

21. Therefore, the Government of India, Ministry of Defence restricted the usage of ranks awarded in military services. After retirement usage of military rank as prefixes or suffixes is prohibited, then the same cannot be used as prefixes.

22. In the present case, the Bar Council of India Rules indicates that the names of the Advocates shall be entered in the rolls without prefixes or suffixes, title or degrees. When the name of an Advocate in the State role has been entered without suffixes, prefixes, titles or degrees, the said name enrolled as an Advocate alone must be used for filing cases, vakalatnama and in all Court proceedings. Therefore, it is amply clear that usage of suffixes, prefixes, titles or degrees with the names by the Advocates in all Court proceedings are impermissible.

23. Advocates as homogeneous class cannot be discriminated. The



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prefixes, suffixes, titles or degrees if allowed would result in causing prejudice to the professional interest of the other advocates. Under the provisions of the Advocates' Act, an advocate enrolled has got a duty not only towards the Court, but also against his colleagues and litigants. Any such discrimination or usage of suffixes, prefixes, titles or degrees would result in taking an undue advantage in a legal profession for personal gains.

24. Therefore, the 2nd respondent in the present case is to be restrained from using suffixes, prefixes, titles or degrees in his name in all the Court proceedings including filing of cases, vakalatnama, etc.

25. In view of the facts and circumstances, we are inclined to issue the following directions;

- (1) Regarding the allegation of enrolment of the 2nd respondent Mr.S.Ganesan as an Advocate in the State roll, the respondents 1 and 2 are directed to conduct an enquiry in the manner contemplated under the Advocates' Act and Rules and take a decision and pass orders on merits and in accordance with law.
- (2) The petitioner and the 2nd respondent are at liberty to submit their respective documents, statement of defence before the Bar Council of Tamil Nadu and Puducherry for conducting an enquiry and to



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pass appropriate orders as expeditiously as possible.

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- (3) The 1st respondent is directed to complete the above exercise within a period of three (3) months from the date of receipt of copy of this order.
- (4) The 2nd respondent / Mr.S.Ganesan is prohibited from using prefixes, suffixes, titles or degrees including military title or awards or academic distinction for filing cases, vakalatnama and in all Court proceedings. The 2nd respondent is directed to use his name as Shri.S.Ganesan, in all Court proceedings. In the event of any violation, the Bar Council of Tamil Nadu and Puducherry shall initiate appropriate proceedings for misconduct.
- (5) The copy of the order is directed to be communicated to the Registrar (Judicial) so as to ensure that the prefixes, suffixes, titles, distinctions, degrees are not used by the Advocates, while filing cases, vakalatnama and in all Court proceedings.

26. With the above directions, this Writ Petition stands disposed of. No costs.

[S.M.S., J.] [C.K., J.]
25.06.2024
(1/3)

Jeni
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Speaking order
Neutral Citation : Yes



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To

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1. The Secretary,
Bar Council of Tamil Nadu and Puducherry,
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Chennai – 600 104.
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