

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.9.2015 & Pronounced on: 07.9.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN  
and  
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.25773 of 2015  
and  
MP.NO.1 OF 2015

P.Yasmin Begum ... Petitioner-in-person

Vs.

1. The Chairman  
Bar Council of India  
21, Rouse Avenue Institutional Area  
Near Bal Bhawan  
New Delhi 110 002.
2. The Chairman,  
Bar Council of Tamil Nadu and Puducherry  
High Court Buildings  
Chennai 600 104.

... Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the order issued by the second respondent in his proceedings in Notification Roc.No.2057 of 2015 dated 14.8.2015 and quash the same as illegal and consequently, direct the second respondent to enrol the petitioner as an Advocate on the roll of the Bar Council of Tamil Nadu within a time frame fixed by this Court.

For Petitioner : Mrs.P.Yasmin Begum  
Petitioner-in-person  
For Respondent-1 : Mr.S.R.Rajagopal  
For Respondent-2 : Mr.S.Y.Masood

O R D E R

V.Ramasubramanian,J

The petitioner, whose application for enrolment as an Advocate was directed by the Bar Council of Tamil Nadu and Pondicherry to be kept pending till the disposal of two criminal cases against her, has come up with the above writ petition challenging the decision of the Bar Council.

2. Heard Mrs.P.Yasmin Begum, petitioner appearing in person, Mr.S.R.Rajagopal, learned counsel for the first respondent and Mr.S.Y.Masood, learned counsel for the second respondent.

3. The petitioner completed a Bachelor's Degree in Business Administration in First Class with distinction in the year 2003. She later completed a Master's Degree in Business Administration in the year 2007 and completed a 3 Year Law Degree in May 2013 from the Government Law College, Madurai.

4. It appears that the petitioner hails from a fairly orthodox Muslim family and had overcome several obstacles to get her educated, even after her marriage and the birth of children. Therefore, after completing Law Degree, she made an application on 19.8.2013 to the Bar Council for enrolling her as an Advocate. But, the application was kept pending in view of the orders passed by this Court in CrI.O.P.No.14573 of 2014.

5. Therefore, the petitioner filed a writ petition in W.P.(MD) No.2508 of 2015 on the file of the Madurai Bench of this Court. The said writ petition was disposed of by a Division Bench at Madurai by an order dated 06.4.2015, holding that a writ of Mandamus cannot be issued in a collateral proceedings, when the direction issued by a learned Judge of this Court not to enrol candidates with criminal background was operating.

6. After the disposal of the writ petition, the Bar Council sent a communication dated 14.8.2015 informing the petitioner that her application will be kept pending till the disposal of the criminal cases or at least till the disposal of the petition for quashing the First Information Reports in both the criminal cases. Challenging the said order, the petitioner is before us.

7. Mr.S.Y.Masood, learned counsel for the second respondent opposes the very maintainability of the writ petition on the ground that the first writ petition filed by the petitioner was already dismissed. But, we do not think that the said objection is sustainable. The writ petition W.P.(MD)No.2508 of 2015 filed by the petitioner was only for a writ of Mandamus. The said writ petition

was not actually dismissed, but was only closed. Paragraphs 12 to 15 of the order of the Division Bench dated 06.4.2015 read as follows:

"12. Notwithstanding the views expressed and with due respect to the learned Judge, we only wish to observe that reading of Section 24-A of the Advocate's Act, provides for disqualification, in the case of conviction, for an offence, involving moral turpitude and for the offences stated in Section 24-A of the Advocate's Act.

13. It is well settled that by issuance of a writ of Mandamus, a collateral proceedings, cannot be interfered with, more so, when the subject matter, has already been, dealt with by a Co-ordinate Bench of this Court.

14. While declining to issue a writ of Mandamus, as prayed for, liberty is given, to the petitioner, to seek for appropriate modification of the order dated 11.8.2014.

15. With the above directions, the writ petition is closed. No costs. Consequently, M.P(MD)No.1 of 2015 is closed."

8. After the first writ petition was so closed by an order dated 06.4.2015, the second respondent issued a communication dated 14.8.2015, which is impugned in this writ petition. Therefore, apart from the fact that the first writ petition was not dismissed, but was only closed, the cause of action on which the petitioner has come up with the present writ petition has also arisen only after the disposal of the first writ petition. Hence, the objections relating to maintainability are overruled.

9. Coming to the core issue as to whether the two criminal cases pending against the petitioner, would dis-entitle her to get enrolled as an Advocate, it is seen that both criminal cases are the product of a family feud. The complainant in both the criminal cases is none other than the brother-in-law of the writ petitioner. It appears that the petitioner's father by name U.M.K.Basha was appointed as the Life Trustee of a family trust created by the petitioner's grandfather. The petitioner's father, in turn appointed the petitioner's sister Faridha Begum as the Muthawalli. The petitioner's sister, in turn gave a power of attorney in favour of her husband Mr.S.Ghouse Sardar Hussain.

10. For reasons which we are not inclined to enter into, the petitioner's father appears to have cancelled the deed by which he appointed the petitioner's elder sister as the Muthawalli of the Trust. After cancelling the appointment of the petitioner's sister,



he appointed the petitioner herein as the Muthawalli. Therefore, the petitioner's sister, claiming herself to be the Muthawalli of the Trust, has already instituted a suit in O.S.No.283 of 2010 on the file of the Sub Court, Madurai. The prayer in the said suit was for a declaration that the cancellation of her appointment as Muthawalli was illegal and for a permanent injunction.

11. During the pendency of the said suit, the petitioner's brother-in-law lodged two complaints, one in Crime No.1446 of 2010 for alleged offences under Section 147, 452, 323, 506(ii), IPC, read with Sections 427, 324 and 149, IPC and another in Crime No.558 of 2011 for similar offences. After investigation, the Police have also filed final reports and charge sheets have been filed in C.C.Nos.514 of 2010 and 140 of 2012 on the file of the Judicial Magistrate II, Madurai. But, the petitioner filed quash petitions in Crl.O.P.(MD) Nos.13013 and 13597 of 2012 under Section 482 of the Code of Criminal Procedure, on the file of the Madurai Bench of this Court. This Court has granted a stay of further proceedings in those criminal complaints. It is in this background of facts that we have to examine whether the order passed by this Court in Crl.O.P.(MD)No.14573 of 2014 is an impediment for the enrolment of the petitioner.

12. As we have pointed out in a few decisions rendered in the recent past, the aim and object of the order passed in Crl.O.P.(MD) No.14573 of 2014 was only to prohibit the entry of persons with criminal background into the legal profession. A lady, who is implicated along with her own parents, in a criminal case, at the behest of her own brother-in-law on account of a dispute with regard to a family wakf, cannot be termed, by any stretch of imagination to be a person with a criminal background. The relationship between the defacto complainant and the writ petitioner are not in dispute. The fact that both criminal cases are a product of a civil dispute, which is pending in O.S.No.283 of 2010 on the file of the Sub Court, Madurai, is so obvious from a perusal of the complaint. The fact that the petitioner's father and mother have also not been spared of the agony of undergoing prosecution at the instance of the elder daughter of the family, is also borne out by records. It must be noticed that the date of the alleged incident, in relation to C.C.No.514 of 2010 was 23.4.2010 and the date of the alleged incident in relation to C.C.No.140 of 2012 was 03.8.2010. The petitioner had actually delivered a male baby on 14.7.2010, as seen from the hospital records. Therefore, the fact that both complaints are motivated, is very obvious.

13. In the above circumstances, we are of the considered view that the prohibition imposed by this Court in Crl.O.P.No.14573 of 2014 for the enrolment of persons with criminal background, cannot be applied to the case of the writ petitioner. Hence, the writ petition is allowed, the impugned order is set aside and a direction is issued to the second respondent to process the application of the petitioner for enrolment and permit her for enrolment if the application is

otherwise in order. No costs. Consequently, M.P.No.1 of 2015 is closed.

-s/d-  
Assistant Registrar(CO)  
dt:09/09/2015

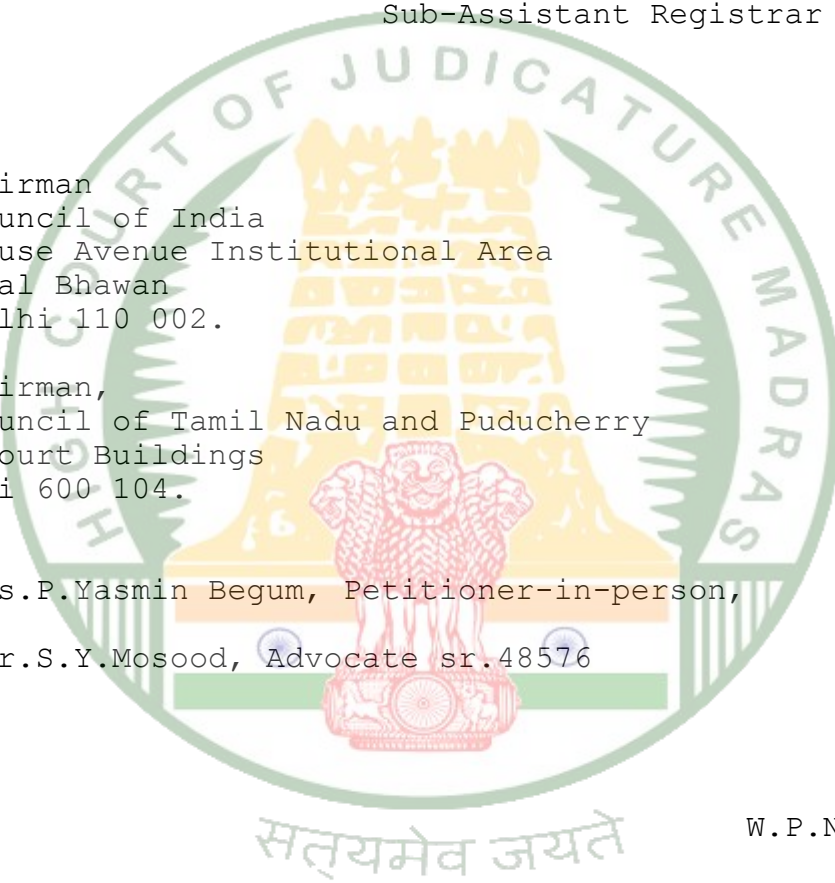
True Copy

Sub-Assistant Registrar

kpl  
To

1. The Chairman  
Bar Council of India  
21, Rouse Avenue Institutional Area  
Near Bal Bhawan  
New Delhi 110 002.
2. The Chairman,  
Bar Council of Tamil Nadu and Puducherry  
High Court Buildings  
Chennai 600 104.

+2 cc to Ms.P.Yasmin Begum, Petitioner-in-person,  
sr.48342  
+1 cc to Mr.S.Y.Mosood, Advocate sr.48576



W.P.No.25773 of 2015.

aa09/09/2015

WEB COPY