



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.5844 of 2014

and

M.P(MD)No.1 of 2014

Mr.K.Periyasamy

... Petitioner

vs.

1)The Bar Council of India,
Rep by its Secretary,
21, Route Avenue Institutional Area,
Near Bal Bhawan,
New Delhi-110 002.

2)The Bar Council of Tamil Nadu,
Rep by its Secretary,
High Court Campus,
Chennai-600 104.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in R.O.C.No.853 of 2014 dated 13.03.2014 on the file of the Respondent No.2 and quash the same as illegal and consequently for a direction, directing the Respondent No.2 to reconsider the enrolment application of the petitioner within the time period stipulated by this Honourable Court.

For Petitioner : Mr.T.Lajapathi Roy

For R1 & R2 : Mr.M.Subash Babu

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

The prayer is in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in R.O.C.No.853 of 2014, dated 13.03.2014, on the file of the Respondent No.2 and quash the same as illegal and consequently, for a direction directing the Respondent No.2 to reconsider the enrolment application of the petitioner within the period to be fixed by this Court.



2.The petitioner herein completed the law degree in the month of May, 2012. While he was studying in the college, he actively participated in all the demonstrations which were conducted to protest against the Government for the welfare of the socially weaker section in the society. After completing the graduation in law, he applied for enrollment before the 2nd respondent Bar Council on 03.06.2013. In his application, he has furnished all the necessary details. But, to his shock and surprise, the 2nd respondent has summarily rejected his application by impugned order dated 13.03.2014. The petitioner has contended that he has not been involved in the criminal case as alleged in the police verification report, which states that the petitioner was involved in the criminal case in Crime No.1782 of 2007 on the file of Tallakulam Police Station and based on that report, the impugned order has been passed. But, as per Section 26 of the Advocates Act, 1961, the 2nd respondent ought to have provided the petitioner reasonable opportunity to enable him to explain before rejecting his application, but without doing so, the 2nd respondent has summarily rejected the application of the petitioner. Hence, this writ petition.

3.The 2nd respondent has filed a counter affidavit, stating that the Bar Council of Tamil Nadu has received a communication from the police stating that a case in Crime No.1782 of 2007 is pending against the petitioner on the file of Tallakulam Police Station for the offences under Sections 143, 151, 188, 427 IPC altered into Sections 143, 151, 188 IPC and 3(1) TNPPDL Act. Therefore, the application of the petitioner for enrollment has been rightly rejected by the impugned order as per the decision of this Court in W.P(MD)No.10315 of 2013 dated 03.02.2014, wherein, a direction has been issued to the Bar Council to take action against those candidates/advocates, who have not disclosed the material fact in the enrollment application and take necessary action including the suspension of practice. Hence, this writ petition is liable to be dismissed.

4.Heard both sides.

5.Though it is contended by the counsel for the 2nd respondent that the petitioner has not disclosed the material fact in the enrollment application, the counsel for the petitioner denies the said fact. Be that as it may, as rightly contended by the learned counsel for the petitioner, as per Section 26(2) of the Advocates Act, 1961, where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application. In the instant case, without



referring the application of the petitioner for the opinion of the 1st respondent as per Section 26(2), the 2nd respondent has summarily rejected the same by the impugned order. Since the rejection of the application of the petitioner is not in accordance with Section 26 of the Advocates Act, the impugned order is liable to be quashed and is accordingly, quashed. The 2nd respondent shall consider the application of the petitioner in the light of Section 26 of the Advocates Act and pass appropriate orders. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

With the above direction, this writ petition is allowed. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1)The Secretary,
Bar Council of India,
21, Route Avenue Institutional Area,
Near Bal Bhawan, New Delhi-110 002.

2)The Secretary,
Bar Council of Tamil Nadu,
High Court Campus,
Chennai-600 104.

+1cc to Mr.T.Lajapathi Roy, Advocate in SR No.81780

+2ccs to Mr.M.Subash Babu, Advocate in SR No.81969

W.P(MD) No.5844 of 2014
19.12.2016

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