



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.14360 of 2016

Parameswaran Thampi

...Petitioner

-Vs-.

1.The Union Law Ministry,
Represented by Secretary to the Government,
26, Mansingh Road,
Jaisalmer House,
New Delhi-110 011.

2.The Secretary,
Bar Council of India,
21, Rouse Avenue,
Institutional Area,
New Delhi-110 002.

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

4.The Secretary,
Nagercoil Bar Association,
Court Complex,
Nagercoil-629 001.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to pay an amount of Rupees Two Crores by way of compensation to the petitioner for the violation of petitioner's fundamental right and pass further orders as this Court may deem fit and proper.

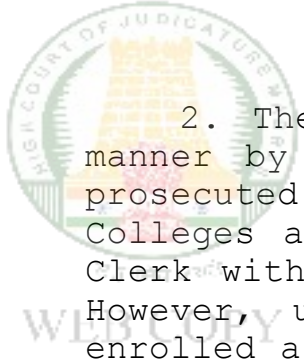
For Petitioner

:Mr.D.Sulif

ORDER

(Order of the Court was delivered
by **NOOTY.RAMAMOHANA RAO,J**)

Heard the learned Counsel appearing for the petitioner for considerable length of time. But it is rather unfortunate that the learned Counsel did not arm himself with the Bare Act of the Advocates Act, 1961.



2. The writ petitioner, who started his career in a humble manner by enrolling himself as Advocate Clerk, appears to have prosecuted L.L.B Degree Course between 1995-1998 at one of the Colleges at Bangalore, whereas, he was registered as an Advocate Clerk with one of the practitioners at Nagercoil in Tamil Nadu. However, upon successfully acquiring the L.L.B Degree, he was enrolled as the Advocate with the Bar Council of Tamil Nadu in 1999. The Bar Association at Nagercoil, lodged a complaint doubting the validity of the enrolment of the writ petitioner as an Advocate on the ground that he could not have simultaneously attend the three year professional Degree Course far away at Bangalore, while working as Advocate Clerk at Nagercoil. Entertaining the said complaint, an order was passed on 29.08.2001, by the Bar Council of Tamil Nadu, suspending the writ petitioner from practising law. Ultimately, the Disciplinary Committee of the Bar Council of Tamil Nadu has concluded its Disciplinary Proceedings by passing a detailed order on 07.06.2003, holding that the writ petitioner is not entitled to be enrolled, as an Advocate and since he has already been enrolled his name is liable to be removed from the Rolls of the Bar Council of Tamil Nadu.

3. Here, we need to take note of an interlocutory order passed by a Division Bench on 17.09.2003 in W.A.No.2127 of 2003. By the said Order, dated 17.09.2003, this Court suspended the operation of the notification dated 29.08.2001, suspending the writ petitioner from practising law, pursuant to his enrollment on 12.11.1999 as an Advocate. The entire course has now culminated in an order being passed by the Bar Council of India, holding that the writ petitioner is entitled to practice Law pursuant to his enrollment as there was no adequate material to come to the conclusion that during the years 1995-1998, he was also simultaneously assisting an Advocate as his Clerk while pursuing law at Bangalore. Thus, the right to practise law, by the petitioner has been restored.

4. Now, the present writ petition is instituted impleading the Union Law Ministry, instead of the Union of India, represented by Ministry of Law, The Secretary, Bar Council of India, instead of Bar Council of India, represented by the Secretary and the Secretary, Bar Council of Tamil Nadu, instead of Bar Council of Tamil Nadu being represented by its Secretary and the fourth respondent namely the Secretary, Nagercoil Bar Association, instead of impleading the Nagercoil Bar Association, represented by its Secretary, as respondents. The following is the prayer set up in this writ petition:

"Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to pay an amount of Rupees Two Crores by way of compensation to the petitioner for the violation of petitioner's fundamental right and ~~pass further orders~~ as this Court may deem fit and proper."

5. Firstly, we are surprised that the petitioner, instead of choosing the right course of approaching the civil Court to seek



damages has preferred to approach this Court by filing this writ petition, perhaps, as the institution of writ petition, does not require *ad valorem* Court fee to be paid but a fixed Court fee of Rs.200/-.

6. Secondly, under Section 35 of the Advocates Act, 1961, imposition of punishment for advocates for their misconduct has been contemplated. Under Sub-Section 3 thereof, the Disciplinary Committee of a State Bar Council, after giving the advocate concerned an opportunity of being heard, may remove the name of the Advocate from the State Roll of Advocates. Further, if the disciplinary proceedings are kept pending for more than one year period by the Disciplinary Committee of the State Bar Council, such proceedings shall stand transferred to the Bar Council of India, under Sub-Section 1 of Section 36 B of the Advocates Act, 1961, and thereafter the Disciplinary Committee of the Bar Council of India shall dispose of the same within a period of six months. Under Section 37 of the said Act, any person aggrieved by an order of the disciplinary committee of a State Bar Council can prefer an appeal before the Bar Council of India within 30 days from the date of receipt of the order and thereafter, a further right of the appeal has also been provided under the said Act.

7. Thus, the scheme of the Advocates Act, 1961 clearly contemplates and provides for a regulatory mechanism, regulating the right of legal practice by the practitioners. In the absence of any challenge to the validity of these provisions contained in the Advocates Act, 1961, the regulatory scheme contained therein cannot be construed otherwise than as a measure of fair and reasonable restriction on the right of legal practice. As to how the legal practice should be regulated is a policy choice of the Parliament, which manifested in various provisions contained in the Advocates Act, 1961.

8. This apart, Section 48 of the Advocates Act, has provided for indemnity against legal proceedings by making it clear that no suit or other legal proceedings shall lie against any Bar Council or any Committee thereof, or a member of a Bar Council or any Committee thereof, for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder. In the face of statutory indemnity contemplated for under the above said provisions contained under the Act and in the absence of any valid reasons, to doubt the actions of the Bar Council as lacking in good faith, we are of the opinion that the writ petition is a misconceived one. This apart, the claim made by the writ petitioner is not only highly inflated one but also a fanciful one. There is no material placed before us to indicate that he was earning even the minimum income which is liable rendering him to file Income Tax Returns. Though he had enrolled as an Advocate on 12.11.1999 and that remained in force till it was suspended, the petitioner obviously did not earn adequate income to file any such Income Tax Returns either, but however, the petitioner sought for payment of a sum of Rupees Two Crores as compensation. Per se, any such inflated such claim also



deserves to be rejected. Accordingly, the writ petition is dismissed with costs of Rs.500/- (Rupees Five Hundred only) on the petitioner, which shall be paid to the Mediation and Conciliation Centre attached to this Bench, within a period of thirty days from the date of receipt of a copy of this order.

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Sd/-

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

TO

- 1.The Union Law Ministry,
Represented by Secretary to the Government,
26, Mansingh Road,
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- 2.The Secretary,
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- 3.The Secretary,
Bar Council of Tamil Nadu,
High Court Campus,
Chennai-600 104.
- 4.The Secretary,
Nagercoil Bar Association,
Court Complex,
Nagercoil-629 001.
5. The Co-ordinator
Mediation and Conciliation Centre
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.SULIF,ADVOCATE, SR NO: 43526

gsr

JA-DB-24.08.2016/4P:7C

Writ petition (MD) No.14360 of 2016
09.08.2016