

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

W.M.P.No.20034 of 2017
in Rev.Aplw.No.SR.45175 of 2017
in W.P.No.420 of 2017

G.T.Bar Association
rep by its President
Mr.Karunakaran
Chennai

... Petitioner

Vs.

1.Thoothai Muniyasamy

2.The Principal Secretary to
Government of Tamil Nadu
Department of Health and
Family Welfare, Secretariat
Chennai 600 009

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India to grant leave to the petitioner to file Review Petition against the judgment dated 13.04.2017 made in W.P.(MD).No.420 of 2017.

For Petitioner :	Mr.T.Mohan
	for Mr.P.Munusamy
For R1 :	Mr. R.M.Arun Swaminathan
For R2 :	Mr.Vijay Narayan
	Advocate General

ORDER

(Order of the Court was made by P.N. PRAKASH J.)

Dismissed. That is the word we uttered and decision we made today/13.09.2017 upon hearing this frivolous petition seeking review of a serious order dated 13.04.2017 made in WP (MD) No.420 of 2017. Truth to tell, that word may more than suffice, as we may be legitimizing an otherwise unfortunate attempt to assail the order at the instance of the G.T. Bar Association, by pronouncing a detailed verdict. On the eve of the 125th anniversary celebrations of the Madras High Court Building, the averments made in the affidavit are an anachronism we have to face in the law of today. What a fall my countrymen, what a fall? Too precipitous for words and therefore, it is more to ventilate our agony and anguish that we deem it fit and proper to expound on the reasons that impelled us to say 'Dismissed'. Of course, institutional integrity and judicial discipline commend us to pass a speaking order. Here it goes.

2. In the much quoted Book - "Law and Lawyers" - which even our younger generation of lawyers may be exposed to, as English Text in the early years of their law course, Mahatma Gandhi said:

"Throughout my career at the Bar, I never once departed from the strictest truth and honesty. The first thing which you must always bear in mind, if you would spiritualize

the practice of law. is not to make your profession subservient to the interests of your purse, as is unfortunately but too often the case at present, but to use your profession for the service of your country".

3. The petition filed by the G.T. Bar Association is a classic example of a blatant exercise in pursuing 'the interests of your purse' by the community of advocates-who belong to a noble profession. In a candid confession, which is deeply disturbing, it is averred in the affidavit dated 5th June, 2017 as under:

"I state that, due to the said impugned order the Advocates who were practicing exclusively in the jurisdiction of the Magistrate Courts under the Tamil Nadu Registration of Births and Deaths Act, 1969 has lost their briefs and this caused great loss and hardships to the advocates who are practicing in the Magistrate Courts... I state that, since the advocate members of our association are directly affected by the impugned order we seek leave of this Hon'ble Court to prefer a Third Party Review against the Judgment made in W.P.(NP) No.420/2017"

4. The petitioner has gone on record that the verdict of this Court, has affected the commercial interest of the lawyers and prejudiced their practice as professionals, to make ends meet and therefore, they were seeking review of the order. We are truly shocked at one level and not so surprised at another level. If the Mahatma spoke of 'falling standards' in his days in 1917 - what to say a century later. The building where the G.T. Court is housed is also a Heritage Building rivalling the majesty of this Court itself. And now to have

the spectacle of the G.T. Bar Association espousing its personal cause over the 'fiefdom' they enjoyed till now, which this Court accidentally discovered and put an end to the pernicious practice, makes sad reading.

5. In anticipation of a possible challenge to the orders, on this very premise, this Court had rather poignantly, if not presciently, noted in its order dated 13.04.2017:

“8. Over a period of time, the legal fraternity has evolved Birth and death jurisprudence and some members have even carved out for themselves a monopolistic niche, in the Magistrate Courts and would allow none to venture into their territory.”

6. A run through the affidavit dated 5th June, 2017 and the additional affidavit dated September, 2017 (a clear afterthought, if ever there was one) would reveal that the petitioner does not so much as, make even a whisper as to what was the supposed 'error apparent on the face of the record' which warrants this petition. Obviously, therefore, the petition filed itself suffers from the serious vice of 'error apparent on the face of the record' and deserves dismissal with costs for wasting valuable judicial time. Nevertheless, we refrain from imposing any costs in deference to the role of the Bar which is a vital cog in the judicial wheel, that too on the eve of the 125th celebratory environment.

7. In the course of dealing with a Habeas Corpus Petition, this Court, to be brutally honest, per chance, hit upon the extraordinary phenomenon - captured by us in these words:

“8. We came across similar claims by others on the same fashion which aroused our suspicion. Therefore, we directed the Registrar (Judicial) to collect statistics from all the Judicial Magistrates in the State as to the number of applications filed and ordered under the Registration of Births and Deaths Act, 1969 for the period from 1.1.2014 to 30.9.2015. The Registrar (Judicial) produced the statistics called for by us and on perusal of the same, we were alarmed. We found that a total number of 4,13,751 applications have been ordered by various Magistrates in the State of Tamil Nadu for the period from 1.4.2014 to 30.9.2015. We were told that this includes Registration of deaths also. It may be appropriate to set down the statistics in respect of some of the districts:

Cuddalore	..	22,579
Pudukkottai	..	23,927
Ramanathapuram	..	24,777
Sivagangai	..	20,691
Thanjavur	..	25,092
Tiruchirapalli	..	20,800
Tirunelveli	..	32,893
Villupuram	..	25,865
Virudhunagar	..	23,689

8. Stung to the quick, this Court dug deep and found that thanks to Rule 9 (3) of the Tamil Nadu Regulations of Birth and Death Rules, 2000, thoughtlessly enacted, the Judicial Magistrates were exercising a power which did not truly belong to them. A power which belonged to the Executive Magistrates, as rightly understood and mandated in the Union Territory of

Puducherry - vide G.O. Ms. No.191/LAD, Local Administration Department dated 29.08.1983, in Tamil Nadu, it was being exercised and exploited before Judicial Magistrates.

9. The report of the Commissioner Mr. R. Mohandoss - Retired District Judge, obtained by us made sad reading. Realizing the executive folly, the State Government responded with alacrity and came up with G.O.Ms.293 dated 02.12.2016. This G.O was challenged and in the composite order dated 13/04/2017, its constitutionality passed legal muster. It was found that the Judicial Magistrates did not have the authority or jurisdiction to handle this portfolio which was not adversarial, but, merely inquisitorial and enquiry-based. As confessed in the affidavit filed before this Court now, by the G.T. Bar Association, a host of practitioners thrived and the Judicial Magistrates also played along unfortunately, without even one of them realizing the faulty ways. No one knows what the uses to which such certificates were put to or even now being put to, until we put a stop to its assembly line production or issue.

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10. The affidavit and additional affidavit do not so much as question the correctness of the decision dated 13.04.2017. They do not so much as even advert to what legal error had crept in and how, if at all, any of the findings was mistaken or misplaced. The additional affidavit has come to be filed only

upon realization that affidavit dated 5th June, 2017 was too much of a giveaway and therefore, in a clear afterthought, the petitioner has averred as under:

“If the said power is vested with an administrative authority the same would greatly affect the interest of people at large as there is no proper procedure or process”.

The averment is as vague as what vagueness could be and lacks factual and legal credibility.

11. Our order dated 13.04.2017 was passed after deep deliberations and upon compilation and collection of mountain of evidence to base our findings on. We have given reasons, verse and word, as to why the Judicial Magistrate was never contemplated to be vested with the power in question. Even *de hors* the G.O.Ms.293, we had little difficulty in coming to the said conclusion. While so, our hands were strengthened by the quick footed response from the State of Tamil Nadu which enacted the G.O.Ms.293 with the approval of the Central Government vide Sec.30 of Registration of Births and Deaths Act (for short “the RBD Act”). We even examined the *vires* challenge to the G.O. Ms. 293 and found that the State had the power and exercised such power in the manner known to law and therefore, G.O.Ms.293 was legal and valid.

12. While so, we examined the so called ‘procedure and process’

in the grant of certificates under the RBD Act and found that it was not an adversarial proceeding where serious search, enquiry and examination was called for. It was more of an inquisitorial exercise where the authority had to be satisfied whether the applicant was entitled to the remedy prayed for. It may suffice for us to refer to paragraph no.29 from the order dated 13.04.2017, which reads thus:

“29. That apart, the verification contemplated by Section 13(3) of the RBD Act is not predicated on adversarial procedure, but, on an inquisitorial methodology. Strangely, a system of procedure got fossilised, under which, the claimant would make an assertion that he was born on a particular date at a particular place in an area; would make the Commissioner of the Corporation/Municipality/Tahsildar of that area as a party respondent in the petition filed under Section 13(3) of the RBD Act; and aver that his birth was not registered within one year. He would apply for a certificate from the Commissioner/Tahsildar and file an application before the jurisdictional Magistrate to the effect that such a birth has not been registered in their office. Naturally, the authorities would issue such a certificate negating the claim. Since the Commissioner/Tahsildar would have no interest in the lis, they would remain ex parte. Based on the paper publication and the sworn statement of the claimant that he was born on a particular date and that the same was not registered within one year, the Magistrate would issue a direction to the authorities to make necessary entries in their record. This spurious procedure, pointed out by the learned Advocate Commissioner in his report, has camouflaged an ordinary executive function to make it look as if it is a judicial act.”

It is this fossilized “process and procedure” that the petitioner is seeking to legitimize. Hence, we reject the claim that the order which is sought to be reviewed, was not ‘in the best interest of the public at large’ as is sought to be casually averred without so much as a whit of basis or evidence.

13. Thus, any which way we look at it, the petitioner, as is openly averred, is seeking to protect the turf, the practitioners hitherto unfairly and unfortunately enjoyed. By no stretch of imagination can we be seen to be yielding to such a relief. It is singularly unfortunate that such a petition was filed and the counsel for petitioner - surely with his heart and mind not in it as could be evidently seen during his presentation - sought to elevate the challenge as being akin to Chandrakumar, Salem Bar Association, Revenue Bar challenges of various legislations. Mere verbosity does not make a case or law. There must be substance behind the challenge or relief prayed for. We see none as none could be manufactured also. We find it therefore very easy to decline interference, yet choose to pass this order at some length, undeserving of the merits in the petition. It would be pertinent to quote the Hon'ble Supreme Court in **Federation of Bar Associations in Karnataka vs. Union of India [2000 (6) SCC 715]** where it was unequivocally observed "in no uncertain terms the advocates have got any locus to maintain writ petitions with regard to location of High Court Bench as the Courts are constituted for the purpose of litigants and that the advocates have got no role to play in the matter of location of Benches" - as quoted in **V. Subramnian -vs- Union of India** dated 08.10.2004 in WP No.20038/2004 - in the context of creation of the Madurai Bench.

14. The said dictum would equally apply to cases of this genre where

the legal fraternity openly seeks hegemony over the jurisdiction, as if a closed shop meant for their well being and practice. It is most unfortunate that the previous dispensation of virtual oligopoly - which a group of lawyers enjoyed, is sought to be perpetuated. The very thought is inconceivable to sustain. We say no more. We hope and trust the Bar, at large, would refrain from pursuing its 'personal interest' camouflaged as 'public interest' and waste valuable judicial time, in such hopeless causes. The Bar owes it to the profession and society at large to let the noble profession stay noble.

15. Accordingly, this W.M.P. seeking the leave of this Court to file review petition against the judgment dated 13.04.2017 made in W.P.(MD).No.420 of 2017 is dismissed.

Further, in view of the dismissal of this W.M.P., the review petition also stands dismissed at the SR stage itself. No costs.

(P.N.PRAKASH, J.)

(N.AUTHINATHAN, J.)

13.09.2017

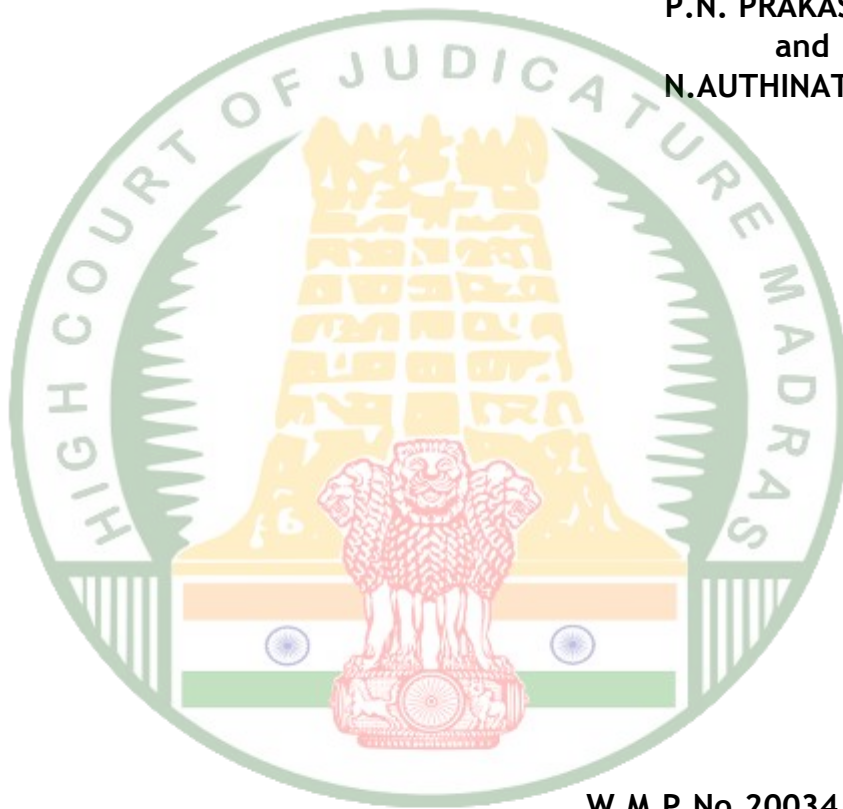
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To

The Principal Secretary to
Government of Tamil Nadu
Department of Health and
Family Welfare, Secretariat
Chennai 600 009.

P.N. PRAKASH, J.
and
N.AUTHINATHAN, J.

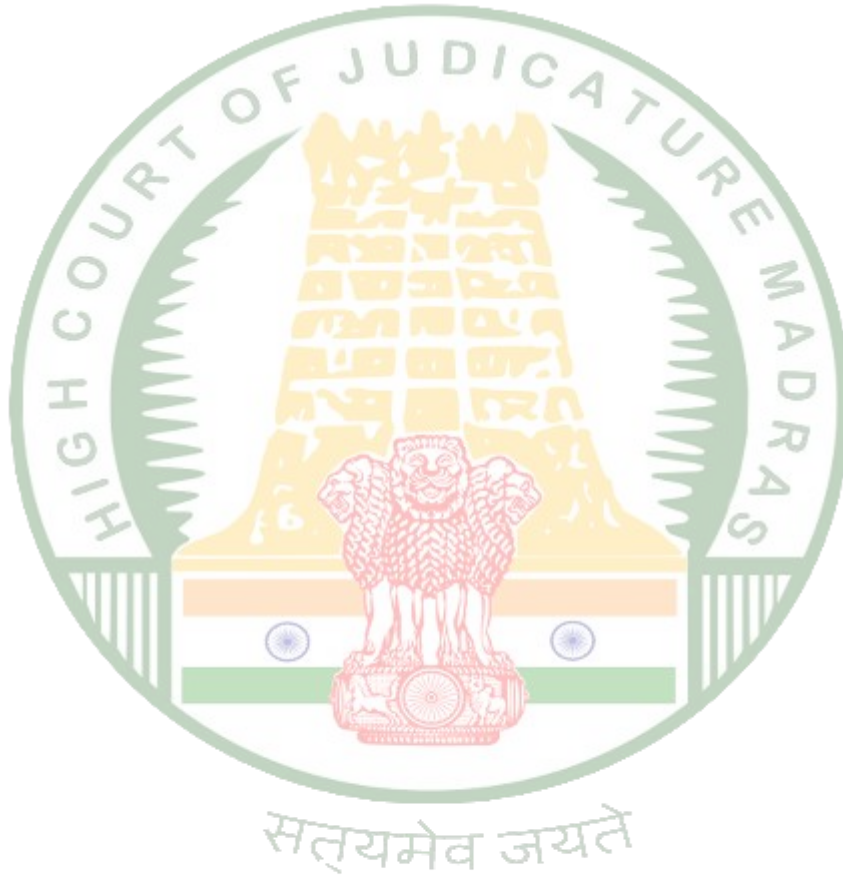
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