

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:
THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.4565 of 2017

Tamil Nadu State Fencing Association,
(formerly Tamil Nadu Fencing Sport Association),
rep. By its Secretary, Dr.R.Subramanian,
No.4/1A, North Avenue,
Muthamizh Nagar,
Kodungaiyur, Chennai 600 118.

... Petitioner

vs.

1. The Secretary,
Union of India,
Ministry of Youth Affairs and Sports,
Room No.401, C-Wing,
Shastri Bhavan,
Dr.Rajendra Prasad Road,
New Delhi - 110 001.

2. Fencing Association of India,
rep. By its President,
Mr.Durga Das Boro,
No.46/2, Mahalla Sui Gran,
Patiala - 147 001.

3. D.Nagappan
4. P.Rajkumar
5. Jayachitra

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the 2nd respondent to affiliate the petitioner Association.

For Petitioner : Mr.T.Mohan,
for Mr.S.Anbazhagan

For Respondents 1 & 2: Mr.G.Baskaran,
Central Govt. Standing Counsel

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the 2nd respondent herein to affiliate their Association.

2. According to the petitioner, their Association is registered under the Tamil Nadu Societies Registration Act vide Registration No.225/2014. The petitioner Association was formed on 07.08.2014 in order to develop and motivate fencing sports and the fencers from the State of Tamil Nadu to the International arena. Their Association is affiliated by the Tamil Nadu Olympic Association (TNOA) vide its proceedings in No.TNOA/Fencing/2015-2016, dated 28.11.2015. It is the case of the petitioner that if TNOA affiliates an Association in the State level, the 2nd respondent should automatically affiliate such Association with it.

3. It is the further case of the petitioner that their Association is the only Association in the State of Tamil Nadu, which is actively functioning for the development of Fencing Sports and fencers by conducting Sports Meets and Championships regularly under various categories. The grievance of the petitioner is that despite repeated requests made by them to the 2nd respondent on 12.01.2015, 27.10.2015 and 05.12.2016, they have not taken any steps to affiliate them. Hence, having no other alternative, the petitioner is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The petitioner has come up with this petition with an innocuous prayer seeking a direction to the 2nd respondent to affiliate them, by considering their representation. Since the petitioner is registered under the Societies Registration Act, it can be affiliated only as per the by-laws. This Court is of the view that what cannot be considered cannot be directed to be considered.

6. In similar circumstances, this Court by an order dated 04.11.2016 in W.P.Nos.37049 to 37052 of 2016, dismissed the said Writ Petitions, holding as under:

"5. At the outset, this Court is of the considered view that the prayer sought for by the petitioners is an innocuous one for the simple reason that the petitioners are not eligible to occupy the present newly constructed houses. It is seen that they were originally allotted houses way back in the year 1998 and even according to them, the said houses were occupied by some third parties for the past 19 to 20 years. Subsequently, when the houses were demolished and new houses were constructed, they seek for an allotment, to which course of action, they have no locus standi for the reason that having kept quiet

all along and having not resided in the houses previously allotted to them, they cannot now seek an allotment as a matter of right. This Court is of the firm and considered view that what cannot be considered, cannot be directed to be considered, under the guise of considering the representation.

6. In this context, this Court wishes to follow the decision of a Division Bench of this Court in the case of M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District, reported in 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in the case of A.P.SRTC Vs.G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170, wherein in Para Nos.18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pilable' authorities have misused the direction to 'consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put

forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider' the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about

the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

7. First of all, petition for allotment itself is not maintainable. In any view of the matter, only because of the decision of this Court they continued their allotment. The respondents therefore rightly has come to the conclusion that the petitioners are not entitled to the relief as they claimed for allotment. It is very clear case that when the original order clearly says that it will be allotted to only persons in occupation after the allotment, cannot be considered to be allotted to them. That is why they have come with the idea by contending as if they are entitled to the relief even though under law, they are not entitled for the relief. Hence, I do not find any reason to interfere with the reasoned order of the authorities."

7. Following the ratio laid down by this Court in the above decision, finding no merits for considering the case of the petitioner, this Court dismisses the present Writ Petition. However, the petitioner is at liberty to file a Civil Suit in respect of their grievance, if available. No costs. Consequently, connected W.M.P.No.4775 of 2017 is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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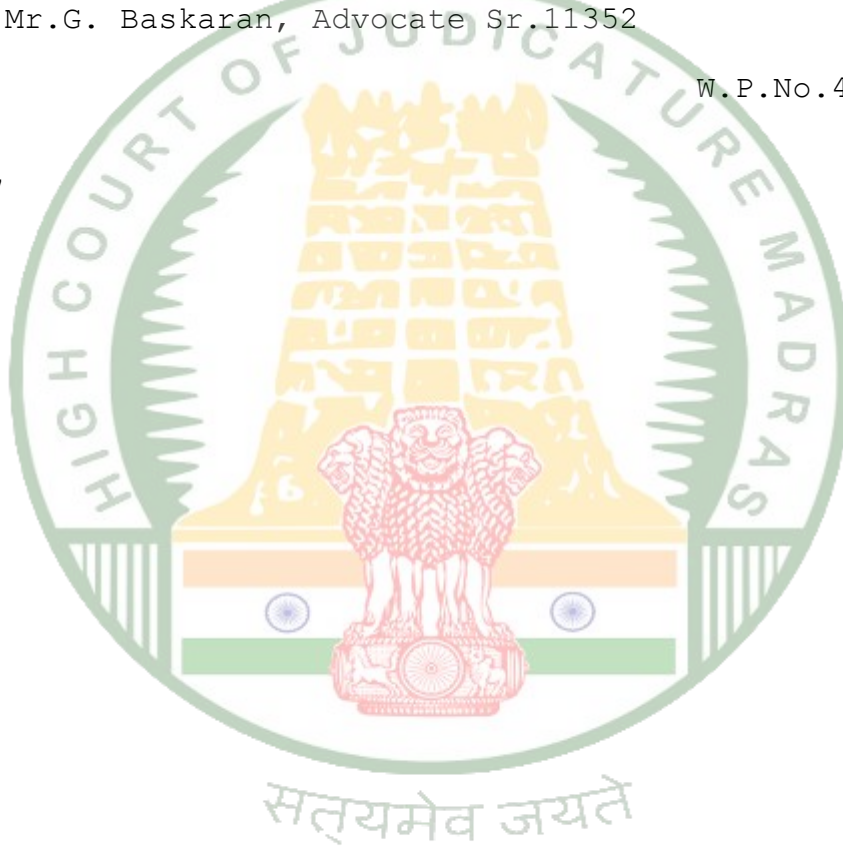
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+ 1 cc to Mr.S. Anbazhagan, Advocate Sr.11861

+ 1 cc to Mr.G. Baskaran, Advocate Sr.11352

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BR(CO)
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