

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.3.2018
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

Writ Petition No.5056 of 2018

G.Mohanakrishnan

...Petitioner

Vs

1.Bar Council of India, rep.by
its Secretary, No.21, Rouse
Avenue Institutional Area,
Near Bal Bhawan, New Delhi-2.

2.Bar Council of Tamil Nadu and
Puducherry, rep.by its Secretary,
High Court Buildings, Chennai-104.

3.Bar Council of Tamil Nadu and
Puducherry, rep.by the Returning
Officers, Mr.Justice G.M.Akbar Ali (Retd.)
and Mr.Justice G.Mathivanan (Retd.)
High Court Buildings, Chennai-104.

....Respondents

PRAYER : Writ Petition filed under Article 226 of The Constitution of India for issuance of a Writ of Declaration to declare that the notification dated 28.2.2018 is null and void and direct the 3rd Respondent herein to permit the persons found in Final Voter List as published in the Website of the Bar Council of Tamilnadu and Puducherry and include the Identity Cards prescribed by the Government of India and the State Government as the Identity Card for Voting in the Election to be held on 28.3.2018 for the Election as a Member of the Bar Council of Tamilnadu and Puduherry.

For Petitioner : Mr.S.S.Balaji

For Respondents : Mr.S.R.Raghunathan for
Respondent-1

Mr.J.Pothiraj for
Respondents 2 & 3

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In this writ petition, filed by way of public interest litigation, the writ petitioner, an advocate has sought a declaration that Notification dated 28.2.2018 issued by the third respondent is null and void.

2. By the aforesaid notice, advocates have been notified that only persons, whose names appear in the voters' list published by the third respondent, would be allowed to vote and that the voters would have to carry valid identity cards, failing which, they might not be allowed to vote.

3. As per the impugned notification, in case of persons carrying identity cards, which have expired, the respondent Authorities might exercise their discretion whether or not to allow the concerned person to vote. This means that if the identity of the voter is otherwise established and it is found that the voter is enrolled with the Bar Council and is eligible to vote, he will be allowed to vote. But, in case of any suspicion or doubt, the third respondent will exercise discretion not to allow the voter to vote.

4. The writ petition has been filed on the obvious apprehension that the power reserved to allow or not to allow some voters carrying expired Identity Cards to vote may be abused.

5. Learned Counsel appearing for respondents 2 and 3 gives an undertaking to this Court that applications for renewal of Identity Cards will be processed and the Identity Cards will be renewed within 15 days from the date of application, since elections are scheduled to be held on 28.3.2018 and the voters will not be prejudiced.

6. The election is being administered by Returning Officers, who are retired Judges of this Court. The impugned notification has been issued by the Returning Officers. The Rule has apparently been made by the Returning Officers.

7. This Court, in exercise of jurisdiction under Article 226 of the Constitution of India, cannot interfere with a notification which requires voters to carry Identity Cards. No voter has the right to insist on voting in the absence of proof of eligibility to vote, which can be ascertained from a valid Identity Card. In case of an expired Identity Card, the identity of the voter may be established, but not his/her eligibility, for a person who ceases to remain on the rolls of

the Bar Council even though enrolled at some earlier point of time, or is under suspension is not eligible to vote. Discretion has been reserved to allow candidates whose eligibility to vote is not in doubt, even though they may not be carrying valid Identity Cards.

8. It is well settled, that this Court exercising jurisdiction under Article 226 of the Constitution of India, cannot sit in appeal over decisions of authorities. There is no such infirmity in the impugned notification, which calls for interference of this Court in exercise of its power of judicial review under Article 226 of the Constitution of India.

9. We only direct the Bar Council to ensure that all applications for renewal of the Identity Cards are disposed of within 15 days from the date of submission of the applications.

10. Mr.Pothiraj, learned counsel appearing on behalf of Bar Council of Tamil Nadu and Puducherry/Respondent Nos.2 and 3, submits that the last date for making the applications for renewal of identity cards will be extended till close of working hours on 12.3.2018.

11. An application for renewal of an Identity Card can be made at any time and there can be no outer limit for making such an application. The time limit of close of working hours on 12.03.2018 is only for the purpose of renewal before the elections.

12. Recording the undertaking given by the learned counsel for respondents 2 and 3, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

To:

1.The Secretary, Bar Council of India,
No.21, Rouse Avenue
Institutional Area, Near Bal Bhawan, New Delhi-2.

2.The Secretary, Bar Council of Tamil Nadu and Puducherry,
High Court Buildings, Chennai-104.

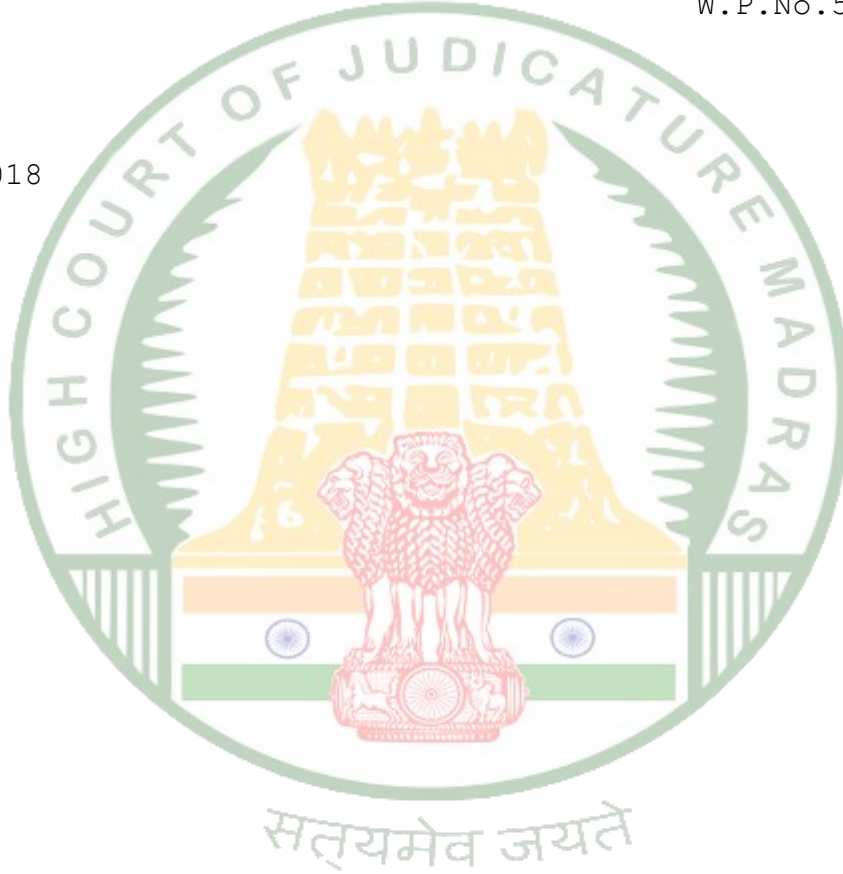
3.The Returning Officers, Mr.Justice G.M.Akbar Ali (Retd.) and
Mr.Justice G.Mathivanan (Retd.), Bar Council of Tamil Nadu
and Puducherry, High Court Buildings, Chennai-104.

+1 cc to Mr.S.S.Balaji Advocate sr 18201

+1 cc to Mr.J.Pothiraj Advocate sr 18374

W.P.No.5056 of 2018

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