

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2018

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.455 of 2018
and W.M.P.No.522 of 2018

M.Antony Selvaraj ... Petitioner

Vs.

- 1.The Bar Council of India
Represented by its Secretary
21, Rouse Avenue Institutional Area
New Delhi - 110 002.
- 2.The Bar Council of Tamil Nadu & Puducherry
Represented by its Secretary
High Court Campus
Chennai 600 104.
- 3.The Special Committee of the Bar Council
of Tamil Nadu & Puducherry
Represented by its Chairman,
High Court Campus
Chennai - 600 104. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in the order dated 13.12.2017 in T.N.E.C.R. No.17 of 2017 passed by respondent No.3 and quashing the same.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.S.R.Raghunathan for R1

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1. This is a writ petition, which seeks to assail the order dated 13.12.2017, passed by respondent No.3, i.e., the Special Committee of the Bar Council of Tamil Nadu and Puducherry.

1.1. To be noted, respondent No.1 is the Bar Council of

India, while respondent No.2 is the Bar Council of Tamil Nadu and Puducherry.

2. Mr.Radhakrishnan, quite candidly, says that he does not wish to challenge the findings returned on merits via, the impugned order passed by respondent No.3.

2.1. Learned Counsel's only contention is that respondent No.3 had no jurisdiction to pass the impugned order, whereby, while referring the matter to respondent No.1/Bar Council of India, under Section 26(1) of the Advocates Act, 1961, for passing appropriate orders for removal of the petitioner's name from the roll of respondent No.2, it prohibited, by way of an interim measure, the petitioner from practicing as an advocate in any Court, judicial or quasi judicial forum within the territory of India.

2.2.Mr.Radhakrishnan, says that such a power is not available to respondent No.3, either in the proviso appended to Section 26(1) of the Advocates Act, 1961 or under Rules 1 and 2 of Chapter VII of the Bar Council of India Rules.

3. It may be important to note that the petitioner herein, concededly, suppressed the information pertaining to pendency of criminal cases, at the time of seeking enrollment. The petitioner is, admittedly, being prosecuted under Sections 406 and 420 of the I.P.C.

4. We have heard the learned counsel for the petitioner. We are not inclined to intervene with the impugned order passed by respondent No.3, for the following reasons:

(i) First, we are exercising power under Article 226 of the Constitution. Therefore, the petitioner cannot, but agree that the power vested in this Court is discretionary in nature. If that be so, according to us, given the circumstances that, the petitioner, concededly, is being prosecuted for serious criminal offences, we are not inclined to exercise any discretion in the matter.

(i)(a) This principle of law is enunciated by the Supreme Court in the decision rendered in State of Maharashtra and Others Vs. Prabhu, (1994) 2 SCC 481. The relevant observations made by the Supreme Court in the said judgement are, thus, extracted hereafter :

"..... 5. On this test the order of the High Court does not appear to be well-founded. Even assuming there was technical breach and the show-cause notice did not spell out those relevant facts which could have empowered the Government to take action the social injury by nominating or appointing the respondent to an office of responsibility must not only have raised the eyebrows in the educational circle

but is susceptible of creating unhealthy atmosphere. Reliance was placed on the letter issued by the Director of Education withdrawing his circular debarring the respondent from being entrusted with any examination work. It is not necessary to comment on it. But the letter obviously was issued without properly appreciating the effect of order passed by the High Court. Such hasty actions by superior officers are destructive of discipline which is necessary to be maintained. In any case the Director might have acted under constraints for reasons more than one but the High Court was not bound by it. It was in a better position to appreciate the effect of such order. Therefore, even if the order of the Government was vitiated either because it omitted to issue a proper show-cause notice or it could not have proceeded against the respondent for his past activities the High Court should have refused to interfere in exercise of its equity jurisdiction as the facts of the case did not warrant interference. What could be more harmful to society than appointing the respondent as member of the Board, a position of importance and responsibility, who was found responsible for mass copying at the examination centre of which he was a supervisor. It shakes the confidence and faith of the society in the system and is prone to encouraging even the honest and sincere to deviate from their path. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good."सत्यमेव जयते"

(emphasis is ours)

(ii) Second, insofar as the Constitutional Courts are concerned, there can be no doubt that, they can prohibit the appearance of an advocate from practicing before it or other judicial forums or over which they have jurisdiction whenever it is found that the conduct of the advocate is such that, it would reflect poorly on the administration of justice if he is allowed to practice before judicial and quasi-judicial fora.

5. The fact that the offences were committed by the petitioner prior to his enrollment, in our view, ought not to make any difference, as the premise on which, an advocate is enrolled and granted a license is that, he is a gentleman. The petitioner, according to us, clearly, does not fulfill that parameter; at least that is what is evident to us, at this juncture. Therefore, the petitioner will have to go through an enquiry which would be conducted by respondent No.1, i.e., the Bar Council of India. In case the petitioner is exonerated in the enquiry, he can always get rehabilitated.

6. Having regard to the aforesaid, the only direction, that we can pass, at this juncture, is that respondent No.1/Bar Council of India, should hasten the proceedings and conclude the same within eight (8) weeks of receipt of a certified copy of the order.

7. Mr.S.R.Raghunathan, who appears for respondent No.1, takes notice of the observations made by us hereinabove.

8. The writ petition is disposed of in the aforesaid terms. Consequently, the connected pending application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsm
To

1.The Bar Council of India
Represented by its Secretary
21, Rouse Avenue Institutional Area
New Delhi - 110 002.

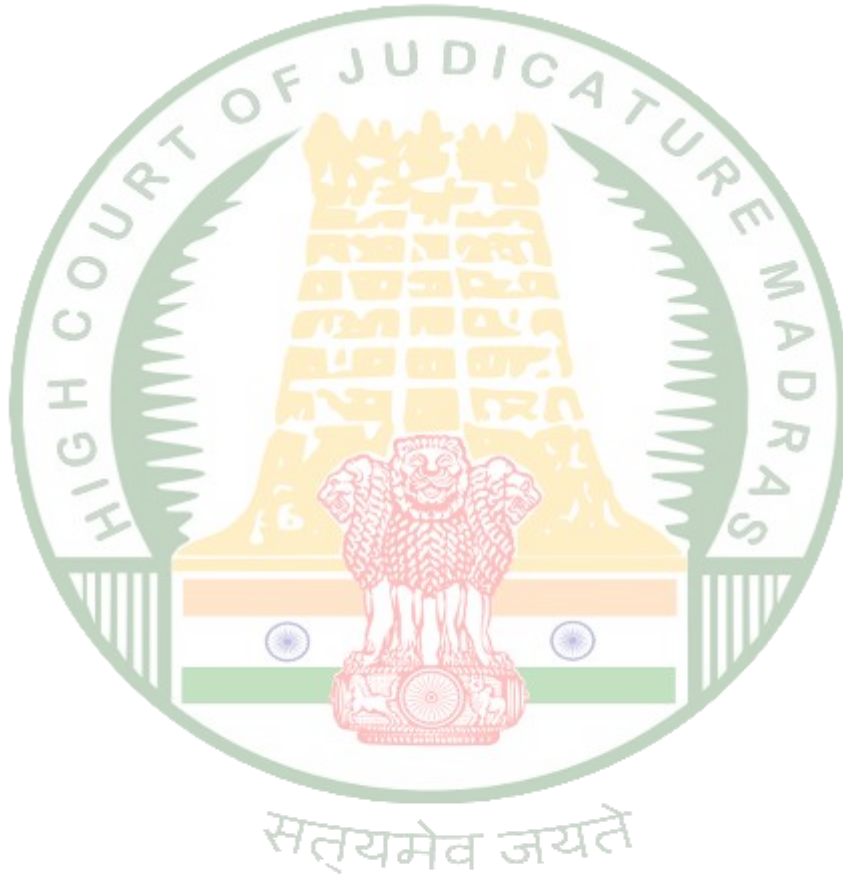
2.The Bar Council of Tamil Nadu & Puducherry
Represented by its Secretary
High Court Campus
Chennai 600 104.

3.The Special Committee of the Bar Council
of Tamil Nadu & Puducherry
Represented by its Chairman,
High Court Campus
Chennai - 600 104.

+1cc to Mr.M.RADHAKRISHNAN, Advocate, S.R.No. 1637
+1cc to Mr.S.R.RAJAGOPAL, Advocate, S.R.No. 2580

W.P.No.455 of 2018

TR(12/01/2018)



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