

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.02.2018

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.1487 of 2018
W.M.P. No 1890 & 1891 of 2018.

M.Bhuvaneswari

..Petitioner

Versus

1. The Bar Council of India,
Rep. by its Secretary,
2/6, Siri Fort Institutional Area,
Khel Gaon Marg,
New Delhi, Delhi - 110 049.
2. The Bar Council of Tamil Nadu & Puducherry,
Rep. by its Secretary,
High Clurt Buildings,
Chennai - 600 104.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call further records relating to the impugned order dated 27.11.2017 in T.N.E.C.R.No.19 of 2017 of the second respondent herein and quash the same.

For Petitioner : Ms.A.L.Ganthimathi

For Respondent : Mr.S.R.Ragunathan - R1

Mr.Haja Mohideen Kisthi - R2

ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

This writ petition has been filed to quash the impugned order dated 27.11.2017 in T.N.E.C.R.No.19 of 2017 of the second respondent.

2. Mr.S.R.Raghunathan, learned counsel accepts notice on behalf of the first respondent and Mr.Haja Mohideen Kisthi accepts notice on behalf of the second respondent. By consent, the writ petition is taken up for final disposal.

3. The brief facts leading to the filing of the writ petition is as follows :

The writ petitioner appeared for the XII Standard examination in the month of March, 1995 and passed all subjects, except Mathematics. However, she has passed Mathematics in the month of March 2014. In the meantime, she had joined B.A. Degree by way of correspondence in the Madras University and completed B.A. Degree in May 2005 and completed her LLB in 2014 in Sri Venkateswara University, Tirupathi. Later she completed bar council examination and enrolled as an advocate on 16.08.2014 and her enrollment number is 1307/14 and was practicing as an advocate.

4. When the matter stood thus, one Mrs.Rani Pandian, who is an elder sister of the petitioner's husband, gave a complaint to the second respondent stating that the petitioner has failed in Mathematics in XII Standard examination and requested the bar council to cancel the enrollment of the petitioner as per rules.

5. In pursuant to the above complaint, the second respondent issued a show cause notice on 12.04.2017 in R.O.C.No.667 of 2017 calling for an explanation for non compliance of the Rule 5 of Legal Education Rules 2008. The petitioner had submitted her explanation and thereafter, she was called upon for an enquiry. However, the second respondent, without considering any of the contentions of the petitioner, issued an interim prohibitory order, prohibiting the petitioner from practicing in any court of law including Judicial or Quasi Judicial forum pending disposal of the reference alleging that the Special Committee has forwarded the recommendations for removal of the petitioner's name from the roll of the Bar Council of Tamil Nadu and Puducherry under section 26(1) of the Advocates Act, 1961 to the Bar Council of India and passed the impugned order on 27.11.2017 in T.E.R.C.R.No.19 of 2017. Hence, this Writ petition.

6. The learned counsel for the petitioner submitted that in the impugned Order, only a recommendation has been made to the Bar Council of India for removal of the name of the petitioner from the roll of the Bar Council of Tamil Nadu and Puducherry under section 26(1) of the Advocates Act, 1961 and as the petitioner obtained a law degree and enrolled with the bar Council of Tamilnadu and practicing in the Court of law, the interim prohibitory order passed by the second respondent is not as per law and the second respondent has no power to pass such a prohibitory order and only the Bar Council of India alone has power to remove an advocate from its roles. Therefore, submitted that the order passed by the second respondent is liable to be quashed and the interim order has to be stayed.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

8. The main contention of the writ petitioner is that the second respondent has no power to pass the interim prohibitory order. It is not in dispute that the petitioner was enrolled as an advocate before the second respondent on 16.08.2014 under enrollment No.1307 of 2014. She was enrolled as an advocate as per the law degree provisional certificate. An explanation was sought by the second respondent in ROC No.667 of 2017 dated 12.04.2017 to explain the fact that she has competed her XII Standard Examination after completion of her law degree and also to show cause as to why the petitioner should not be removed from the enrollment since the petitioner as not complied with the Legal Education Rules 2008 [10+2+3] legally framed by the Bar Council of India. In pursuant to the above communication, the petitioner submitted an explanation dated 15.05.2017, wherein she has admitted that though she appeared for XII Standard examination in the year 1995, she has not cleared all the papers and she has cleared mathematics only in the month of March 2014. She has also admitted that she has completed her B.A. Degree in the year 2005 and law degree in February 2012. From her explanation itself, it is very clear that even before completing her XII Standard examination, she appears to have obtained B.A. Degree in correspondence course and law degree from RKM Law College, Chittoor, which is in fact against the Legal Education Rules 2008. Personal hearing was also given to the petitioner, which is not in dispute. Thereafter, the Special Committee of the Bar Council of Tamilnadu at Chennai on 27.11.2017, in TNECR No.19 of 2017 and had passed the impugned order. For more clarity, the impugned order passed by the Special Committee is extracted below.

" 1] The Bar Council received a complaint from the petitioner against the respondent Mrs.M.Bhuvaneswari, who was enrolled as an advocate before this Bar Council on 16.08.2014 in enrollment No.Ms.1307 of 2014. She was enrolled as an advocate as per the Law Degree provisional certificate issued by the Univeristy of Madras through the institute of Correspondence Education. Now, it has been brought to the notice of the Bar Council by one Rani Pandian, Pattukkottai and others informing that the respondent advocate has completed the XII Std. After completion of Law Degree.

2] On receipt of the complaint received against the Respondent advocate, a show cause notice dated 12.04. 2017 was issued calling upon her explanation. In reply to the show cause notice dated 12.04.2017, she had submitted a

detailed explanation dated 15.05.2017 admitting the facts that she got enrolled as an advocate on 16.08.2014. She has also admitted that she had passed the B.A. Degree in Madras University in May 2005 and the Law Degree in February 2012. She also further submitted in her explanation that she had appeared for XII Std. examination in March 1995 and cleared one subject in March 2014. Thus, it is clear that she had obtained the B.A. Degree in May 2005 and the Law Degree in February 2012 when she was not even qualified with XII std. examination. Hence, the respondent advocate had suppressed the said material fact in her application for enrollment, which is clear from her affidavit filed along with the enrollment application.

3] At para 2 of her affidavit, she had stated that she had passed the XII Std. examination in March 1995, but only in the explanation to the show cause notice dated 15.05.2017, the Respondent advocate has come out with the truth that she had passed XII std. only in March 2014. Hence, the Special Committee is of the opinion that she is liable to be removed from the roll of the Bar Council of Tamil Nadu and Puducherry not only for passing the XII Std. in March 2014 after obtaining the B.A. Degree and the Law Degree in the year 2005 and 2012 respectively, but also for filing the false affidavit before the Bar Council of Tamil Nadu and Puducherry and get herself enrolled as an advocate.

4] Therefore, the Special Committee has forwarded this recommendation for the removal of her name from the roll of the Bar Council of Tamil Nadu and Puducherry under Sec.26(1) of the advocates Act, 1961 to the Bar Council of India for appropriate orders. Accordingly, the office is directed to forward this recommendation to the Bar Council of India.

As the respondent's misconduct is serious in nature as she has chosen to file a false affidavit before the Bar Council of Tamil Nadu and Puducherry, the Special Committee feels that it is just and proper to issue an interim prohibitory order prohibiting Mrs.M.Bhuvaneswari (Roll No.1307/2014) from practicing in any court of law including judicial or quasi judicial forum, pending disposal of the reference."

9. While enrolling herself as an advocate, the petitioner has stated in her affidavit that she has passed her XII Standard examination in March 1995 and produced the provision certificate of law degree and got herself enrolled as an advocate. Filing such an affidavit, suppressing the true fact is nothing but misrepresentation and clear case of fraudulent act. The typed set filed by the petitioner clinchingly establish the fact that she has passed her XII Standard mathematics only in the month of March 2014. Before completing her XII Standard examination, she appears to have obtained two degrees, which is against the very rules of legal education. Therefore, we are of the view that the order passed by the Special Committee recommending removal of the petitioner from the roll of the bar council cannot be faulted at all. The Special Committee has recommended for removal of the petitioner's name as per Section 26(1) of the Advocate Act. Such recommendation is admittedly pending before the Bar Council of India. In the meanwhile, the Special Committee, while recommending removal has issued interim prohibitory order prohibiting the writ petitioner from practicing in any Court of law including Judicial or Quasi Judicial forum.

10. The learned counsel appearing for the petitioner submitted that since the Bar Council of India alone has power to remove the name of the advocates from the roll on the ground of misrepresentation as to the essential facts, the State Bar Council cannot issue interim prohibitory orders. It is the contention of the learned counsel that the state Bar Council has a power to suspend the advocates only in disciplinary proceedings initiated for their misconduct under section 35 of the Advocates Act. In our view, such a contention cannot be countenanced for the simple reason that the authority vested with the power to enroll a person as an advocate on its roll has a power to regulate its member, since the interim prohibitory order is regulatory in nature, pending final order by Bar Council of India. Section 16 of the General Clauses Act, 1987 reads as follows :

"16. Power to appoint to include power to suspend or dismiss - Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power."

11. A careful reading of the above provision of law makes it clear that unless a different intention appears, the authority which have power to make appointment shall also have power to suspend or dismiss any person appointed. The same analogy can be applied to the second respondent also. The second respondent is vested with a power to admit any advocate on its roll under the Advocates Act 1961.

12. Power to admit a person as an advocate on its roll would also include power to regulate the legal profession. The function of the State Bar Council is to admit a person as an advocate on its roll as per Section 6 of the Advocates Act, 1961. Similarly, State Bar Council has a power to refer the name of advocate on its roll who found to be guilty of professional or other misconduct, to the disciplinary committee of a State Bar Council. The disciplinary committee can pass orders including removal of advocates from the State roll of advocates. Section 35 (3) of the Advocates Act, 1961, reads as follows:

"35(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:-

(a) Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

35.4) (b) reprimand the advocate;

35.5) (c) suspend the advocate from practice for such period as it may deem fit;

35.6) (d) remove the name of the advocate from the State roll of advocates."

13. Whereas, Section 26 of the Advocate Act deals with the disposal of applications for admission as an advocate. The proviso to Section 26(i) of the Advocates Act, 1961 reads as follows:

"26. Disposal of an application for admission as an Advocate-

(1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provision of sub section (2) and (3), [(Note:- Ins. by Act 21 of 1964, sec.14) and to any direction that may be given in writing by the State Bar Council in this

behalf] such committee shall dispose of the application in the prescribed manner.

[(Note:- Proviso added by Act 21 of 1964, sec.14) Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.]”

14. The above provision makes it clear that it enables Bar Council of India, either on a reference made on it or otherwise may remove the roll of advocate who entered on the roll by misrepresentation as to an essential fact or by fraud or undue influence.

15. It is well settled, that proviso cannot be read in isolation from the main enactment nor can be used to defeat the real object of the main enactment. In this regard it is useful to refer the relevant portion of the judgement reported in (2015) 2 Surpeme Court Cases 701 [Sidhharth Viyas and Another v. Ravinath Misra and others]:-

“15. In *S. Sundaram Pillai & others vs. V.R. Pattabiraman* [17 (1985) 1 SCC 591, it was observed: (SCC pp.606-07, paras 27-30)

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.”

16. When the State Bar Council was vested with power to admit any person as an advocate on its roll, it cannot be said

that State Bar Council has denuded its power to regulate a member or a person who entered its roll by fraudulent means or misrepresentation. Therefore, we are of the view that the proviso to Section 26(1) of the Advocates Act, 1961, at the most can be construed as enabling provision which gives a power to Bar Council of India also to remove any of the person from the roll of the State Bar Council either on a reference made to it by the State Bar Council or otherwise. When such member enrolled on its roll by misrepresentation as to an essential fact or by way of fraudulent activities or undue influence etc., such enabling provision cannot be construed that State Bar Council which has power to admit any person as an advocate on its roll have no right at all to deal with its power to regulate the legal profession. If the intention of the legislature was to take away the power of the State Bar Council to remove the members from its roll, the power to admit a person as an advocate on its roll would not have been given to the State Bar Council as per Section 26(1), (2), (3) and (4) of the Advocates Act, 1961. Therefore, we are of the view that the proviso to Section 26(1) cannot be construed to exclude the power of the State Bar Council to remove an Advocate from its roll for misrepresentation as to an essential fact or fraudulent act or undue influence etc., at the time of enrollment.

17. The main object of the Advocates Act, 1961, is to prescribe an uniform qualification for the admission of persons to be advocates. When the State Bar Council is vested with power to admit members, such power includes to remove from its role. For this Section 16 of the General Clauses Act can be imported.

18. When the main Act is silent about the specific provisions, the provision of the General Clauses Act also can be imported. Therefore, we are of the view that the State Bar Council has a power to issue interim prohibitory order as against any member who got themselves enrolled as a member by resorting fraudulent acts and misrepresentation and besides producing false certificates etc. It is only the State Bar Council can take action against such unscrupulous members on its roll. It is high time for the State Bar Council to take appropriate action to weed out the unscrupulous members from its role. We are not persuaded to accept the submission of the learned counsel for the petitioner. It is upto the Bar Council of India to decide the issue. Hence, we are of the view that the State Bar Council which has a power to enroll the members on its role has a power to pass prohibitory order. In view of the same, the writ petition is liable to be dismissed.

19. Accordingly, this Writ Petition is dismissed. No cost.

-s/d-

Assistant Registrar(CCC)

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Sub-Assistant Registrar

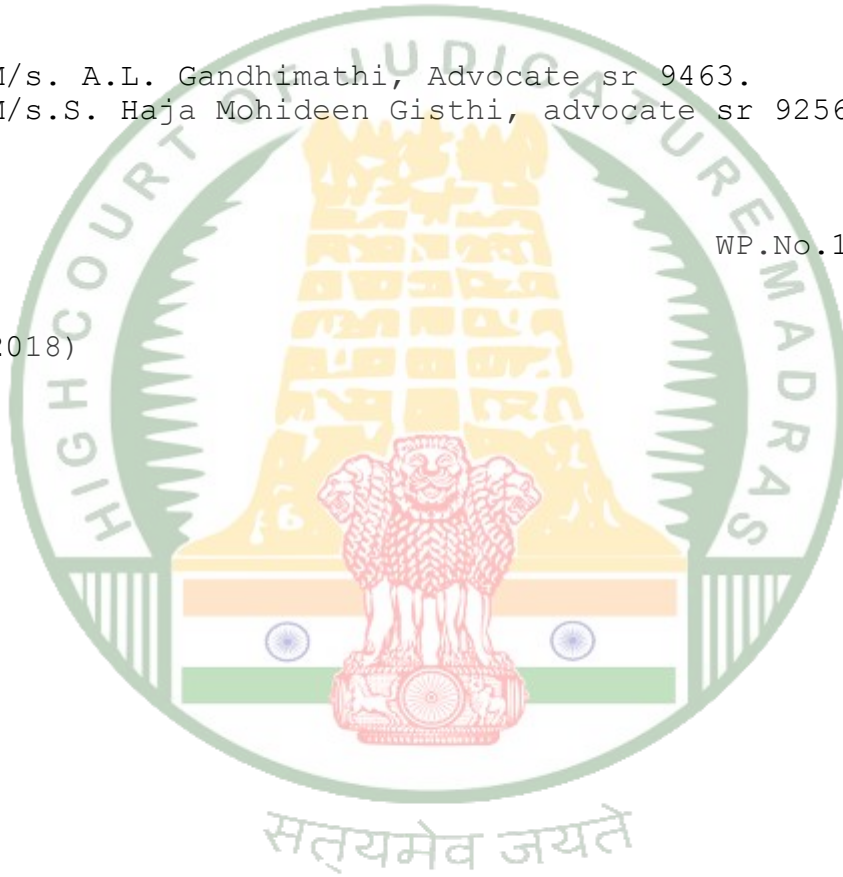
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+1 CC to M/s. A.L. Gandhimathi, Advocate sr 9463.

+1 Cc to M/s.S. Haja Mohideen Gisthi, advocate sr 9256

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SP(28/02/2018)



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