

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 25.07.2018****CORAM :****THE HONOURABLE MR.JUSTICE C.T.SELVAM****And****THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****W.P (MD) No.16058 of 2018**

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Alagarsamy

... Petitioner

vs.

1. The Bar Council of Tamil Nadu and Pudhucherry,
Rep. by its Secretary,
Madras High Court Campus,
Chennai - 600104.

2. The Chairperson,
Enrolment Committee,
The Bar Council of Tamil Nadu and Pudhucherry,
Madras High Court Campus,
Chennai - 600 104.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to enrol the petitioner within a stipulated time.

For Petitioner : Mr.P.Manikandan
For Respondents : Mr.Niranjan S.Kumar

ORDER**(Order of the Court was made by C.T.SELVAM, J.)**

The Writ Petitioner seeks issuance of a Writ of Mandamus, directing the Respondents to enrol the petitioner as an Advocate on the roll of Bar Council of Tamil Nadu and Pondicherry within a stipulated time.

2.The enrollment of the petitioner as an advocate on the roll of Bar Council of Tamil Nadu and Pondicherry is held up owing to some action alleged against him, when he was a student in school and also on the ground that the petitioner has completed the qualification for the Law course through private study.

3.Learned Standing Counsel for the respondents drew our attention to the position that a Full Bench of this Court W.A.Nos.1590 and 1670 of 2015 confirmed the finding of a learned Single Judge passed in **S.M.Anantha Murugan v. The Chairman, Bar Council of India, New Delhi (2015 (6) CTC 22)** to the following effect:



"3. Bar Council of India shall direct the State Bar Councils not to enrol any law graduate with pending criminal cases except bailable cases attracting punishment upto three years and compoundable offences involving matrimonial, family and civil disputes, till the changes are brought in the Advocates Act & Bar Council of India Rules."

4. We would without hesitation inform our reservations. Given the present day social fabric many a deserving candidate might be delayed/denied right to enrol as an advocate on false implication. We might unwittingly be making room for police power/play. Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar & Another ((2014) 8 SCC 273)** observed that power of arrest is one lucrative source of police corruption. Would we be wrong in stating that threat of false implications towards disenabling enrolment as an advocate would be another. However, the present case does not invite consideration of the decision of the Full Bench.

5. As regards the qualification for the Law course through private study, this Court, in a similar circumstances, in **W.P. [MD].No.12506 of 2018, dated 16.07.2018**, has passed the following order:-

"3. The issue which forms the basis of reference to a Full Bench in W.P.No.30315 of 2017 is a show cause notice and prohibitory notice to resolution No.184/2017, adopted by the Bar Council of Tamil Nadu, on 09.11.2017. The Hon'ble First Bench, in the order dated 29.11.2017 has observed:

6. The short question is whether Advocates, who have obtained degrees through open university system without satisfying the Bar Council Rules, can be permitted to practise. In this context, it would possibly be pertinent to refer to Rule 5 of Part IV of the Bar Council of India Rules relating to Legal Education, which came into force on 14th September 2008. Rule 5 provides as follows:-

"5. Eligibility for admission:

(a) Three Year Law Degree Course: An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree



program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

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(b) Integrated Degree Program: An applicant who has successfully completed Senior Secondary School course ('+2') or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment.

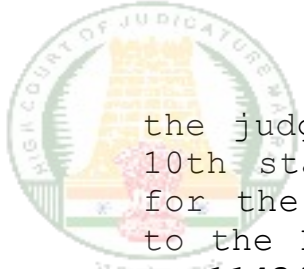
Provided that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. Course, as the case may be.

Explanation: The applicants who have obtained 10+2 or graduation/post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses."

Underlining supplied.

4. As informed in the order of the Hon'ble First Bench dated 29.11.2017, the short question in W.P.No.30315 of 2017 was whether Advocates, who have obtained degree through Open University System, without satisfying the Bar Council Rules, can be permitted to practise.

5. The counter affidavit of the second respondent informs that W.P. (MD) No.11434 of 2017 and other connected writ petitions have been referred to a Larger Bench, which has reserved orders and that the Bar Council has been awaiting



the judgment for enrolling the candidates, who have studied 10th standard and 12th standard privately. Learned counsel for the second respondent informs that the matter referred to the Full Bench was a decision of this Court in **W.P. (MD) . No.11434 of 2017**, dated **27.06.2017**, whereby this Court found it necessary to stay the resolution of the Legal Education Committee dated 30.04.2017, which was to the following effect:-

"Thus, in conclusion it can be stated that for seeking admission into 3 year law course qualifications needed are only 12th and three year graduation, with 12th being the basic qualification for seeking admission into 3 year law course, while for seeking admission into 5 year law course only 10th and 12th qualification suffices with 10th being the basic qualification for seeking admission into the 5 year law course.

The qualifications of 10th, 12th (+2) and graduation may be obtained through any mode (distance / correspondence / open schooling method).
"

6. This Court had expressed the view that by the resolution of Legal Education Committee dated 30.04.2017, an attempt had been made by the Legal Education Committee to get over the decision in **K.Sakthi Rani Vs. The Secretary of the Bar Council of Tamil Nadu**, reported in **2010 (2) LW 746**, which it would not have power to do. We will now explain why neither the decision in **K.Sakthi Rani**, cited supra, nor the decision of this Court in **W.P. (MD) .No.11434 of 2017**, dated **27.06.2017**, would stand in the way of the enrollment of the petitioner. This Court, under its orders dated **27.06.2017** in **W.P. (MD) .No.11434 of 2017**, has observed as follows:-

5.Taking note of the decision in **K.Sakthi Rani** case (supra), the Bar Council of India took a pro-active step, by sending a circular to the Registrar/Deans/Directors of all Universities, deemed to be Universities and Law Schools in India dated 20.12.2010. The direction as issued is to the following effect:

"In view of the Bar Council of India, Legal Education Rules-2008, University Grants Commission Act and Regulations, decision of Honourable Supreme Court of India and subsequent decision of High Court of Tamil Nadu, all Universities, deemed to be Universities, Law Schools and others offering



LL.B. Courses are informed that applicants who have obtained +2 higher secondary pass certificate or First degree certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the integrated five year course or three year LL.B. Course, as the case may be. However, the applicants who have obtained 10+2 or graduation/post graduation through open universities system directly without having any basic qualifications for prosecuting such studies are not eligible for admission in law courses."

(underlining supplied)

6.The above position remained as such for about three months and once again, the matter appears to have been brought up before the second respondent, the Legal Education Committee, which discussed the same in its meeting held on 17.04.2011. The agenda of the meeting reads as follows:-

"to consider the note of seeking clarification as to whether 10th or 10+2 or graduation is the basic qualification as mentioned in explanation to Rule 5 (b) of the Legal Education Rules, as it has created confusion".

7.Prima facie, we are of the view that the Rule is very clear and has been upheld by the Division Bench of this Court, following the decision of the Hon'ble Supreme Court in **Annamalai University** case (supra) and the Bar Council understood the purport of the Rule and issued a circular dated 20.12.2012, to all the Institutions.

8.Be that as it may, the Legal Education Committee took a decision that in view of the proviso contained in Rule 5(b) read with explanation, it is clarified that to avail the benefit of the proviso, the basic qualification of 10th must be obtained not from the Open University System. In other words, the resolution states that a candidate, who has obtained 10th qualification by Open University System, cannot avail the benefit of the proviso in terms of the explanation to Rule 5(b) of the Rules. Thus, the said legal position, as



understood by the Bar Council of India, remained as such for nearly seven years. However, by the impugned resolution dated 30.04.2017, the Legal Education Committee has, among other things, resolved as follows:

"Thus, in conclusion it can be stated that for seeking admission into 3 year law course qualifications needed are only 12th and three year graduation, with 12th being the basic qualification for seeking admission into 3 year law course, while for seeking admission into 5 year law course only 10th and 12th qualification suffices with 10th being the basic qualification for seeking admission into the 5 year law course.

The qualifications of 10th, 12th (+2) and graduation may be obtained through any mode (distance / correspondence / open schooling method)."

7. As may be seen, the pro-active step of the Bar Council of India, through its circular dated 20.12.2010, has been appreciated by this Court. It is to be noted that in such circular, the bar is not against those who have completed their course of study, except through formal schooling. A reading of the direction issued by the Bar Council of India on 20.12.2010 makes clear that bar against enrolment is not of those who have obtained requisite qualification for enrolment through open university system but only in respect of those who have done so 'directly without any basic qualification for prosecuting such studies. ...' i.e., those who have obtained +2 qualification without passing the basic qualification therefor, which is the 10th standard, those who have obtained a degree without obtaining the basic qualification there for, i.e., 10 + 2, those who have obtained post graduate degree without obtaining the basic degree therefor i.e., graduation. In fact a closer reading of the Rule reveals that it does not speak of the 10th standard qualification at all. It speaks only of the 10+2 qualification i.e., the 12th standard as commonly understood.

8. Now, it is to be appreciated that the petitioner has completed 10th standard through formal schooling, his initial degree through regular college, as also the law degree through Government Law College, Tirunelveli. It is to be understood that the petitioner has done his +2 not without having the basic qualification, but, he has done so through private study and by clearing the exams conducted by a recognized university.

<https://hcservices.ecourts.gov.in/hcservices/> The petitioner like many others has pursued the same curriculum and taken the same examination conducted by a



recognized board as has a school going student. While so, it would be rather harsh to invoke the principle of 'intelligible differentia' between students, who do private study and those who go through school. It would be more appropriate to apply the ceteris paribus rule - other things being equal, to treat equal all. In decision of this Court in **W.P. (MD) No.11916 of 2018 dated 10.07.2018** in the matter of **T.K.Rangarajan v. Union of India through its Secretary Ministry of Human Resources Development and others**, this Court observed as follows:

"A Lament:

We note that students who pursue private study in plus two are not eligible to apply for NEET. Why is this so?

We have tens of thousands of children, having to support a mother, siblings, ailing parents and elders and sometimes a deserving father, by eking out a living by earning that extra rupee which keeps the home fire burning and yet in real earnest pursue private study simply because they want to be educated. They want to lift themselves out of the squalor their lives are. Why are such children being deprived? Is it because they do not put in 'n' number of fixed hours of study or is it because science subjects require practical training which they are not exposed to?

If it is the first question, is it not the knowledge gained as reflected by performance in examination that matters?

If it is the second, should not Government/Education bodies provide for practical training, widely publish the availability thereof and thus enable such deserving students to hope for a better tomorrow. At the end of the day, our Constitutional scheme is inclusive, not exclusive. We trust that the issue will engage the attention of the authorities."

To quote, one of the tallest world citizens, Nelson Mandela:

"A nation should not be judged by how it treats its highest citizens, but its lowest ones."

10. For the purpose of convenience and clarity, it is to be stated that the petitioner has completed his 10th standard in the year 2003 and +2 in the year 2008, i.e., more than the requisite period of two years have lapsed between his completing 10th standard and 12th standard.

11. In the light of what is stated above, and particularly that the petitioner does not fall foul of the Bar Counsel of India Circular dated 20.12.2010, the Writ Petition shall stand allowed and there shall be direction to the respondents 1 and 2 to enrol the petitioner as an Advocate on the roll of Bar Council of Tamil Nadu and Pondicherry.



12. Counter affidavit of the second respondent informs that the petitioner's original Law Degree Provisional Certificate has been returned to him on his request on 27.07.2017. The petitioner is directed to forthwith resubmit the same along with a copy of this order.

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13. Given the explanation, we have provided hereinabove, we hope and trust that the Bar Council will process the applications of all persons, placed in position similar to that of the petitioner, without driving each and every one of them to Court. No costs."

6. In the light of what is stated above, the Writ Petition shall stand allowed and there shall be direction to the respondents to enrol the petitioner as an Advocate on the roll of Bar Council of Tamil Nadu and Pondicherry. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Bar Council of Tamil Nadu and Pudhucherry,
Rep. by its Secretary,
Madras High Court Campus,
Chennai - 600104.
2. The Chairperson,
Enrolment Committee,
The Bar Council of Tamil Nadu and Pudhucherry,
Madras High Court Campus,
Chennai - 600 104.

+1cc to Mr. P. Manikandan, Advocate Sr.No. 74770

RJ2

VB/KAK/SAR3/23.08.2018/8P/4C

W.P (MD) No. 16058 of 2018
25.07.2018