

THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.10.2019
CORAM
THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No.28032 of 2012

Mrs. Felicia Muthian
W/o. S.R.Muthian ... Petitioner

/vs/

1. The Secretary,
Trustee Committee,
Tamil Nadu Advocates Welfare Fund,
Bar Council Building,
High Court Campus,
Chennai 104.
2. The President,
Bar Association,
Kuzhithurai Court,
Kuzhithurai,
K.K.District.
3. M. Kirupakar Sampath,
S/o. S.R.Muthian ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the first respondent to sanction the death benefit of deceased Advocate S.R. Muthian died on 21.10.2011 without compelling the nominee alone to apply advocate for Welfare Fund Relief and after retraining the share of 3rd respondent without insisting to get no objection from the 2nd respondent within the date fixed by this Court.

For Petitioner : Mr. A.R. Nixon

For Respondents : Ms. M. Leena,
for Mr. S.Y.Masood,
for R1
: Mr. R.Annamalai,
for R2

O R D E R

This writ petition has been filed seeking a direction to sanction the fund payable to the petitioner's husband.

2. According to the petitioner, the petitioner's husband was a practicing advocate at Kulithurai Court, having 50 years of experience in the Bar. He died on 21.10.2011, leaving the petitioner, 9 daughters and one son, by name, Kirupakar Sampath, the 3rd respondent herein. The petitioner's husband was a member of the Advocate Welfare Fund Scheme, of Tamil Nadu Bar Council, and paid the premium in full, and the petitioner's son Kirupakar Sampath, who is the third respondent herein, has been shown as nominee to receive the Death cum Benefit Fund. After the death of the petitioner's husband, she has made an application seeking for the death benefit before the first respondent, and the same has been rejected stating that the petitioner should get a certificate from the Bar Association, Kulithurai and also obtain a consent signature from the nominee. According to the petitioner, when she approached the Kulithurai Bar Association, they refused to give any certificate and the petitioner's son is also not willing to give a consent to the petitioner to receive the amount. In the above circumstances, the present writ petition has been filed.

3. Even though notice was served on the third respondent and his name is printed in the cause list, none represented for the third respondent.

4. The learned counsel for the petitioner would submit that the petitioner, being the wife of the deceased, has filed an application along with other legal heirs, except the nominee, the third respondent herein, and the third respondent is not willing to give consent to the petitioner to receive the amount, the third respondent also did not come forward to receive the amount. Hence, the other legal heirs of the deceased advocate are seeking for the payment of the amount. The Bar Council cannot insist the petitioner to get the consent from the nominee, and there is no provision in the scheme enabling the Bar council to withhold the fund on the ground that the nominee has not come forward to receive the amount.

5. The learned counsel appearing for the second respondent/ Bar Association, Kulithurai, submitted that the petitioner's husband was not a member of the Kulithurai Bar Association. In the above circumstances, they are not in a position to give any certificate enabling the petitioner to receive the amount.

6. The learned counsel appearing for the first respondent submitted that if the petitioner files a fresh application, the Committee will consider her application and pass suitable orders.

7. The petitioner is the wife of the deceased Advocate and he was the member in the Advocate Welfare Fund, after his death, the legal heirs of the deceased advocate is entitled to get the relief. The third respondent, who is the son of the deceased was made as a nominee to receive the amount. But, he is not coming forward to receive the amount. In the above circumstances, the petitioner along with other legal heirs of the deceased advocate, approached the first respondent. Now, the first respondent is refusing to release the amount in favour of the petitioner on the ground that the nominee did not come forward to receive the amount and the local bar association has also not given certificate.

8. It is settled law that the nominee is only entitled to receive the amount payable to the deceased. Thereafter, it is the legal heirs of the deceased person are entitled to share the same proportionately. Ultimately, it is only the legal heirs of the deceased, who are entitled to get the money. In the instant case, the nominee, who is the son of the petitioner is not willing to come forward to receive the money, and the other legal heirs of the deceased advocate are before the first respondent. Merely because, the nominee has not come forward to receive the money, the first respondent cannot refuse to disburse the amount payable to the deceased advocate, to the other legal heirs, as they are legally entitled to receive the same, the third respondent/nominee, who is also one of the legal heirs of the deceased advocate, is also entitled to a share in the amount payable to the deceased. When the third respondent/nominee failed to come forward to receive the amount, the other legal heirs need not wait indefinitely.

9. In the above said circumstances, the first respondent/Trustee Committee of the Tamil Nadu Advocates Welfare Fund is directed to apportion the amount payable to the deceased advocate and pay the shares of the petitioner along with other legal heirs who have come forward to receive the amount. So far as the share of the third respondent is concerned, the first respondent is directed to

deposit the amount in any one of the Nationalized Bank in a fixed deposit and as and when the third respondent approaches the first respondent seeking for the amount, it can be disbursed to him. As far as the certificate sought from the local bar association is concerned, now the second respondent/The President, Bar Association, Kuzhithurai, submitted that the deceased was not a member of the second respondent association. Hence, the first respondent shall not insist for the certificate from the second respondent.

10. In the result, the writ petition is allowed. The first respondent is directed to disburse the shares of the petitioner and other legal heirs, who have approached the first respondent and deposit the share of the third respondent in any one of the Nationalized Bank in the interest bearing fixed deposit. The petitioner along with other legal heirs are directed to make a fresh application before the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of which, the first respondent is directed to consider the same and pass suitable orders as indicated above within a period of four weeks thereafter. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Secretary,
Trustee Committee,
Tamil Nadu Advocates Welfare Fund,
Bar Council Building,
High Court Campus, Chennai 104.

2. The President,
Bar Association,
Kuzhithurai Court,
Kuzhithurai, K.K. District.

Copy to;

The Registrar General
High Court, Madras.

+1cc to Mr.A.R.Nixon , Advocate SR.No.88650

+1cc to Mr.S.Y.Masood , Advocate SR.No.88590

+1cc to Mr.R.Annamalai , Advocate SR.No. 88476

+1 cc to Government Pleader Sr.No.89699

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A.SK(08/11/2019)