

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.16033 of 2021

and W.M.P.Nos.16942 and 18051 of 2021 and 16943 of 2021

L.Chandrakumar

.. Petitioner

Vs.

1. The Registrar of Societies,
O/o.Inspector General of Registration,
Santhome High Road,
Foreshore Estate, Chennai-600 028.
2. The Madras Bar Association,
Rep. by its Ad-hoc Committee,
High Court Buildings, Chennai-104.
3. The Election Officer for election
to Madras Bar Association,
'ARL House' 101/6, Old No.51, 5th Street,
Padmanabha Nagar, Adyar,
Chennai-600 020.
4. The Bar Council of Tamil Nadu and Puducherry
Rep. by its Chairman,
Gate No.4, High Court Campus,
Chennai, Tamil Nadu-600 104.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the Election Notification issued by the Madras Bar Association dated 14.07.2021 and to quash the same in view of the pandemic situation and to consequently direct the Association to conduct the election after restoration of normalcy.

For Petitioner : Mr.S.Vijayakumar
for M/s.N.R.Jasmine Padma

For Respondents : Mr.R.Shunmugasundaram,
Advocate General
assisted by Mr.D.Ravichander,
State Government Counsel for R1

Mr.V.Prakash, Senior Counsel
for Mr.C.Seethapathy for R2

Mr.C.K.Chandrasekhar for R4

O R D E R

PUSHPA SATHYANARAYANA, J.

The challenge is to the Election Notification dated 14.07.2021 issued by the third respondent on behalf of the second respondent/Madras Bar Association, detailing out the schedule for commencing the process on 15.07.2021 to be completed on 21.08.2021.

2. Since the Bar Council of Tamil Nadu and Puducherry (in short, "BCTNP") is arrayed as the fourth respondent, this writ petition is listed before a Division Bench. We are unable to understand as to why the Bar Council of Tamil Nadu and Puducherry has been made as a party, which is only a statutory regulatory body for regulating the legal practice and legal education in India.

3. Learned counsel for the petitioner argued that even in the interim order granted by this Court on 30.07.2021, this Court recorded the submission of the learned counsel for the fourth respondent, who relied upon the judgment in Salem Bar Association case, wherein, it has been declared that all Associations should get certificate of practice verification done by the Bar Council and thereafter only, the voters list should be prepared and no such verification in such of certificate of practice has been done by the Bar Council of Tamil Nadu and Puducherry.

4. Admittedly, the second respondent Association is registered under the Tamil Nadu Societies Registration Act, 1975

and its members are only Advocates, who have been practising before this Court and they are admitted based on the recommendations of the full members of the Association. Therefore, there cannot be any dispute that non-Advocates are members of the Association. However, in view of the Certificate and Place of Practice (Verification) Rules, 2015, brought into force, the Ad-hoc Committee, which is at the helm of the affairs of the Madras Bar Association, shall ensure that the mandates and requirements under the said rules, i.e., Certificate and Place of Practice (Verification) Rules, 2015 are complied with by the members, who will constitute the electoral college.

5. Further, for the purpose of election to draw the electoral college, the Association has to check the payment of subscription by its members to enable them to exercise their franchise, in terms of the Bye-laws. Insofar as the non-payment of subscription is concerned, it is for the Ad-hoc Committee, which is in office, to take a call as to whether any concession to the members can be given or collection of subscription can be postponed to a later date, in view of the COVID-19 pandemic situation.

6. As far as the claim of the petitioner that the members should be directed to follow 'one association/bar one vote' principle is concerned, it is for the second respondent Association to take care of the said issue, as had been held by the Hon'ble Supreme Court in Supreme Court Bar Association V. B.D.Kaushik, 2011 (13) SCC 774.

7. A co-ordinate Bench of this Court in order dated 20.01.2021 made in W.P.No.1571 of 2019 (V.Madhesh V. Secretary, Bar Council of Tamil Nadu and Puducherry), examined all these aspects and issued certain directions in respect of conduct of election for the Bar Associations. The respondents herein will have to adhere to the said directions scrupulously.

8. In the light of the above, the following directions are given:

8.1. The Ad-hoc Committee, which is presently holding the office of the Madras Bar Association, shall publish a fresh Election Notification giving the schedule for the conduct of the election, as per Rules and Bye-Laws of the Association.

8.2. Invite fresh nominations from prospective contestants for each of the posts.

8.3. The fresh notification, shall be issued on or before 01.11.2021 and the procedure shall be completed, including declaration of the elections on or before 13.12.2021.

8.4. Mr.R.Shunmugasundaram, Senior Counsel/ Advocate General (former President of MBA), who is also an eligible Full Member of the Association, is appointed as the Election Officer, to conduct the election, as per clause 30 of the Bye-Laws.

8.5. The election is also permitted to be conducted on-line, if the physical secret ballot system is not possible.

8.6. The Members of the Madras Bar Association, office bearers of the Ad-hoc Committee and also the fourth respondent, namely the Bar Council of Tamil Nadu and Puducherry, are directed to co-operate with the Election Officer, in this regard.

9. This writ petition is disposed of, with the above directions. Consequently, the connected miscellaneous petitions are closed. The parties shall bear their own costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Societies,
O/o.Inspector General of Registration,
Santhome High Road,
Foreshore Estate, Chennai-600 028.
2. The Ad-hoc Committee,
The Madras Bar Association,
High Court Buildings, Chennai-104.

3. The Election Officer for election
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4. The Chairman,
The Bar Council of Tamil Nadu and Puducherry
Gate No.4, High Court Campus,
Chennai, Tamil Nadu-600 104.

+1CC to Mr.N.R.Jasmine Padma, Advocate, Sr.No.52955

W.P.No.16033/2021

SSI (CO)
K.RK. (01.11.2021)