



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2021

Delivered on : 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No. 3609 of 2021

WEB COPY

K.Siva

... Petitioner

Vs.

1.The Bar Council of Tamil Nadu
and Pondicherry,
Rep by its Secretary,
Madras High Court Campus,
Chennai - 600 104.

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

3.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

... Respondents

(R3 is impleaded *suo motu* vide Court Order
dated 03.08.2021 in W.P.(MD)No.3609 of 2021)

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus directing the respondents to permit enrollment of the petitioner as an Advocate on the Roll of Bar Council of Tamil Nadu and Pondicherry.

For Petitioner : Mr. G.Prabhu Rajadurai,
For Respondents : Mr. K.R.Laxman, for R1 & R2,
Mr.P.Thilak kumar,
Government Pleader, for R3.

ORDER

K.MURALI SHANKAR, J:

The petitioner has filed the above petition, seeking writ of Mandamus, directing the respondents 1 and 2 to permit enrollment of the petitioner as an Advocate on the Roll of Bar Council of Tamil Nadu and Puducherry within stipulated time.



2. The petitioner, after completion of B.Sc (Computer Science) and M.C.A, joined B.L Course in the Government Law College, Tirunelveli in the year 2015. After completion of Law Degree, he applied to the Bar Council of Tamil Nadu and Puducherry to enroll him as an Advocate. The respondents sent the petitioner's application for Police verification. The Superintendent of Police, Tirunelveli District has sent a proceedings on 20.11.2020 and a copy of the same was served on the petitioner. The petitioner was shocked to learn from the said proceedings that the Superintendent of Police, Tirunelveli District had stated that totally, 85 criminal cases were lodged against the petitioner from 2017 to 2019. Thereafter, the petitioner appeared before the respondents 1 and 2 and explained his position and requested them to consider his application to enroll as an Advocate for the very next enrollment. But, the petitioner was not called for the enrollment on 15.02.2021 and they have orally informed him that unless and until any direction was obtained from this Court, they will not permit him to enroll as an Advocate. Hence, the above petition.

3. When the above matter was taken up on 25.02.2021 by the First Bench of this Court (headed by the Honourable Chief Justice), it has been observed that in the light of how the Full Bench Judgment of 2015 has been read down in the judgment of **K.Divya's** case delivered by this Court on June 26, 2018, a serious question arises as to whether the mere lodging of a complaint indicating a cognizable offence against a prospective Advocate would deprive the candidate of the right or expectation to be enrolled as an Advocate.

4. When the matter was taken up again on 03.08.2021, this Court after hearing the learned counsel for the petitioner and the learned counsel appearing for Bar Council of Tamil Nadu and Puducherry, has passed an order *suo motu* for impleadment of the Superintendent of Police, Tirunelveli District as third respondent in the Writ Petition and directed the third respondent to file an affidavit with regard to the alleged complaints pending against the petitioner. Thereafter, considering the fact that most of the cases were lodged within the limits of Thoothukudi Police, Thoothukudi District, the Superintendents of Police, Tirunelveli District and Thoothukudi District and the Commissioner of Police, Tirunelveli City have filed separate status reports. This Court, after perusing the status reports, found that the reports are bereft of particulars and hence, directed both the Superintendents of Police to appear before this Court through Video Conferencing on the next date of hearing and explain the cases registered against the petitioner.

5. When the matter was taken up on 07.09.2021, Mr.Manivannan,



Superintendent of Police, Tirunelveli District and Mr.Jeyakumar, Superintendent of Police, Thoothukudi District appeared through Video Conferencing.

6. Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, Mr. K.R.Laxman, learned counsel appearing for the respondents 1 and 2 and Mr.P.Thilak kumar, learned Government Pleader appearing for third respondent.

7. The main stand of the respondents 1 and 2 is that in view of the judgment of this Court reported in **2015 (6) CTC 22 [S.M.Anantha Murugan Vs. The Chairman, Bar Council of India, New Delhi]** and the judgment of Full Bench of this Court reported in **2017 (5) CTC 113**, since 85 criminal cases were registered against the petitioner, the petitioner cannot be permitted to be enrolled as an Advocate and that the respondents had no other option, but to comply with the directions issued by this Court.

8. No doubt, this Court in **S.M.Anantha Murugan's** case, has directed the respondents 1 and 2 to verify the criminal antecedents of the candidates, who have applied for their enrollment as Advocates and that the nobility and purity of the Advocate profession cannot be allowed to be sullied by entry of anti-social elements into the profession.

9. When the above judgment of the learned Single Judge of this Court was taken in appeal, the same was referred to Full Bench and while answering the reference, the Full Bench of this Court has also observed that ever increasing criminalization of the Bar is not in dispute as recorded by the learned Single Judge in **S.M.Anantha Murugan's** case.

10. While interpreting the order of the learned Single Judge in **S.M.Anantha Murugan's** case, a Division Bench of this Court in **R.Nagendiran Vs. Chairman of Tamil Nadu Bar Council and others**, [W.P.No.20130 of 2015, dated 11.08.2015] has held,

"But, a careful consideration of the order dated 01.8.2014 passed by the learned Judge would show that the concern expressed by the learned Judge was with respect to anti social elements and persons with criminal antecedents trying to enter into the legal profession, with a view to have a protective gear around themselves. Therefore, the prohibitive order issued by the learned Judge has to be understood in the right perspective and cannot be applied blindfold to all types of cases where criminal complaints came to be registered against individuals."

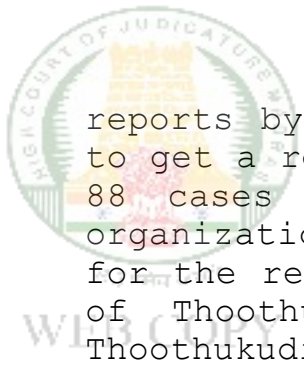


11. On a cursory look at the particulars of the cases registered against the petitioner, we were shocked to notice that as many as 85 criminal cases came to be registered against the petitioner. But a close perusal of the same would reveal that 81 cases out of 85 cases, came to be registered for the incidents alleged to have been occurred on 22.05.2018. But the Superintendent of Police, Thoothukudi District, in his status report, listed out 88 cases, all relating to the one day occurrence on 22.05.2018, wherein 10 cases were shown to be registered on 22.05.2018; 26 cases on 23.05.2018; 26 cases on 24.05.2018; 14 cases on 25.05.2018; 9 cases on 26.05.2018 and one case was shown to be registered on 04.06.2018 all in SIPCOT Police Station, Thoothukudi and two cases were shown to be registered on 22.05.2018 Thoothukudi South Police Station for the occurrences held on that day.

12. In the absence of any charge for criminal conspiracy, is it possible for a person to be present and involved in the commission of offences at 88 various places on the same day?. Admittedly, the petitioner's name does not find place in any of the above said 88 FIRs registered for the incidents allegedly occurred on 22.05.2018. Though the Superintendent of Police, Thoothukudi District, in his status report, has shown the rank of the petitioner in those cases, they have not furnished any particulars as to how and on what basis, the petitioner was implicated in the above 88 cases.

13. Whatever it is, admittedly, the above cases were transferred to the CB-CID and thereafter to CBI. It is also not in dispute that the CBI, after completing the investigation, has laid the final report on 31.12.2019 as against 27 accused and thereafter, a supplementary charge sheet came to be filed on 21.09.2020 as against 53 accused, totally 71 accused. It is pertinent to mention that the petitioner's name does not find place in the first final report or in the supplementary charge sheet.

14. It is evident from the records that the third respondent has submitted a report, dated 20.11.2020 to the respondents 1 and 2, whereunder, they have listed out 85 cases registered against the petitioner and 81 cases were shown to be referred to CBI. As already pointed out, the CBI has filed the second and supplementary charge sheet on 21.09.2020. Though the third respondent is heading the Police Department of a particular District, he has not even chosen to say in his report dated 20.11.2020, that the petitioner's name was not included in the charge sheets filed by CBI, for the reasons best known to him. Even assuming that he is not aware of the filing of the final



reports by CBI, he should have requested the respondents 1 and 2 to get a report from CBI with respect to those 81 cases. The above 88 cases relate to the protest and agitations made by some organizations for closure of Sterlite Copper Plant in Thoothukudi for the reason that the said Plant had polluted the Air and Water of Thoothukudi and caused health hazards to the people of Thoothukudi.

15. As per the status report of the third respondent, one criminal case is shown to be pending for trial in Crime No.772 of 2018 of Triplicane Police Station, Chennai for the offence under Sections 143, 353 IPC and under Section 41 of TNCP Act. It is pertinent to mention that the above case registered by the Triplicane Police Station also relates to Sterlite issue.

16. It is not in dispute that the Tamil Nadu Pollution Control Board and the State Government ordered for closure of the said Copper Plant, after 13 people were reported dead on May 22, 2018, during the protest against the Sterlite Copper Plant, alleging that the Company has violated the Environmental Laws. When the said orders were challenged, a Division Bench of this Court, vide Judgment dated 18.08.2020, dismissed all the petitions and upheld the closure order. Though appeals were preferred, the Honourable Apex Court has refused to grant any interim order for reopening of the Plant.

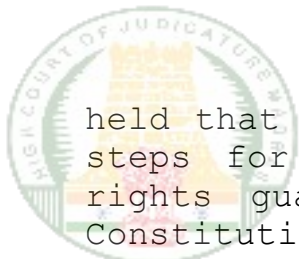
17. It is pertinent to mention that Article 47 of the Constitution of India imposes an obligation on the State that it shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

18. Article 48 (A) of the Constitution of India, which was inserted through the amendment made in the year 1976, mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

19. The duties of the State in protecting the environment are basically the rights of the people. Generally, the rights and duties are considered as the two sides of a same coin and as such, they are inter-connected. Article 51-A (g) of Part IV-A Fundamental Duties, specifically deals with the fundamental duty of citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature.

20. In **Charan Lal Sahu Etc. Vs. Union of India and others**, reported in **AIR 1990 SC 1480**, the Honourable Supreme Court has

<https://hosecases.ecourts.gov.in/cases/wb/3609>



held that the duty of the State is to take adequate and effective steps for the enforcement and the protection of constitutional rights guaranteed under Articles 21, 48-A and 51 (g) of the Constitution of India. Right of speech and expression is a fundamental right, expressly stated in Article 19 (1) (a) of the Constitution of India. Article 21 of the Constitution of India has received liberal interpretation from time to time. Since Article 21 guarantees fundamental right to life, right to environment, free of danger of disease and infection is inherent in it. In **Rural Litigation And Entitlement Kendera Vs. State of U. P.** reported in **AIR 1988 SCC 2187**, the Honourable Apex Court has recognized the right to live in a healthy environment as part of Article 21 of the Constitution of India.

21. As already pointed out, admittedly the petitioner is not an accused in the charge sheets filed by the CBI in connection with the above said 88 FIRs. In the case registered in Triplicane Police Station, the case of the prosecution is that 10 persons belonging to Tuticorin All College Students Federation including the petitioner herein, had assembled unlawfully in Valaja Road and raised slogans by holding banners, directing the Government of Tamil Nadu to ban Sterlite and not to crush the protests against the Sterlite and they had indulged road roko and that thereby, they have prevented the Police from discharging their public duty.

22. We would like to point out that the protest or demonstration organized by the group of students including the petitioner was actually towards fulfilment of their fundamental duty under Article 48 A of the Constitution of India. It is not the case of the Police that the petitioner and other students had indulged in any violent activities at that time. In **R. Nagendran's** case, referred to supra, this Court has observed,

"The mere fact that the petitioner was a part of group, who just stood in front of a liquor shop and shouted slogans, cannot make him guilty of an offence, as they were only exercising their fundamental rights under Article 19(1) (b) and performing their fundamental duty under Article 51- A for impressing upon the State, the need to follow the Directive Principles of State Policy enshrined in Article 47 of the Constitution."

23. Regarding the case registered by Tirunelveli Junction Police Station, in Crime No.263, under Section 143 and 148 IPC, the petitioner was shown as 8th accused and admittedly, charge sheet has not been filed till 06.09.2021, the date on which the Commissioner of Police, Tirunelveli City has filed the status report. The case of the prosecution is that the District Organizer of "People's Power" (kf;fs; mjpfhuk;) along with 18 persons had



assembled without any prior permission and protested against the Central Government for banning the sale of Beef.

24. As already pointed out, the right to freedom of speech and expression and the right to assemble peaceably and without arms are fundamental rights guaranteed under Article 19(1) (a) and (b) of the Constitution of India. Moreover, every citizen is having right to comment on the policies of Governments and to have their own views with respect to the such policies. Even according to the prosecution, it is not their case that the protesters indulged in violent activities or caused or attempted to cause damages to the public property. The other two cases registered under Section 151 Cr.P.C by Palayamkottai Police Station, in Crime No.35 of 2019 and by Pettai Police Station, in Crime No.66 of 2018 are shown to be closed as "Action Dropped".

25. In **R.Nagendiran's** case, referred to supra, the Division Bench of this Court in its order has recorded the disposal of earlier two similar cases arising under extraordinary situations. One related to the registration of a criminal complaint against a person for burning the effigy of a political leader, while participating in a demonstration. Another related to a private complaint of defamation filed against a journalist turned law graduate. In those cases, directions were issued to the Bar Council to permit the enrolment, on the ground that the criminal cases which came to be registered against those individuals could not make those persons as someone with a criminal background, so as to bar their entry into the legal profession.

26. Another Division Bench of this Court in **K.Divya Vs. Bar Council of Tamil Nadu and Pondicerry and another (W.P. (MD)No.12774 of 2018** dated 26.06.2018), came to the rescue of a law student whose enrollment as an Advocate was held up by the Bar Council for the reason that a case was registered against the petitioner therein for the offences under Section 153(A) and 505 (1)(b) IPC r/w Section 66 (F) of Information Technology Act, 2000. Though the offence under Section 60(F) of Information Technology Act is punishable with imprisonment, which may extend to imprisonment for life, the Division Bench of this Court by considering the facts of that case and the nature of charges levelled, held that such offence by no stretch of imagination can be said to be attracted in the facts of the particular case and directed the Respondents to enrol the petitioner as an Advocate. It is also necessary to refer to the decision of this Court, in **S.Manikandan Vs. Tamil Nadu Bar Council and others** [W.P.No.2309 of 2016, dated 21.10.2016], relied on by the learned counsel for the petitioner and the relevant paragraphs are extracted hereunder :

<https://hcservices.ecourts.gov.in/hcservices/> 3. It appears that the petitioner made an application



for enrolment as an Advocate along with necessary documents on 30.03.2015. It appears that the police having apprehended a student, was taken to the police station, where petitioner shown to have went there to rescue the student to get him released, for which, the police were not agreeable. In this regard, a commotion took place. For having went there to the police station with a group of people, FIR has been registered against the petitioner and others, which is pending for more than one year and no final report has been filed so far. There is no act of attempt murder, neither a case of murder nor rape. Technically, either of the respondent authorities are also not taking any decision to enroll the petitioner, eventhough, the petitioner was otherwise found eligible. Mere registration of FIR against any person is not a proof of any offence being committed to disable persons right.

4. In these circumstances, the writ petition is allowed, directing the respondents/Bar Council to consider the case of the petitioner for enrolment, after verification of the documents available. No costs."

27. As already pointed out, the petitioner who had already completed his postgraduation in Computer Science, had studied Law and while studying Law, he had taken part in some protests/demonstrations representing some organizations, raising their voice against the policies of the Government.

28. Moreover, the respondents have nowhere whispered that the petitioner was involved in heinous crimes or involved in anti-national and anti-social activities. But the third respondent in his report, dated 20.11.2020 submitted to the respondents 1 and 2, has stated that 85 cases were registered against the petitioner and that since the petitioner is a person acting against the Government, no recommendation can be given concerning his conduct. There is a colossal difference between complaining that a person is acting against the Government and that person is protesting the Policies of the Government.

29. On a thorough scrutiny of the materials placed before this Court, we find that as many as 85 cases have been registered against the petitioner alleging that he had indulged in the occurrences that had been taken place on the same day and out of 85 cases, 81 cases have been referred to the CBI for investigation. Further, we find that the respondents 1 and 2, while rejecting the claim of the petitioner for enrollment as an Advocate, has not obtained any report from the CBI as to the stage of the investigation in the cases, in which, the petitioner had been arrayed as accused.



30. Though the investigation in many of the cases had been transferred to the CBI, the petitioner did not even choose to implead the CBI as party respondent in this writ petition. During the pendency of this writ petition, this Court, considering the nature of relief sought for by the petitioner, *suo motu* impleaded the Superintendent of Police of Tirunelveli District as party respondent to effectively adjudicate the issue on hand. The Superintendents of Police, Thoothukudi and Tirunelveli Districts, have filed their respective Status Report before this Court.

31. This Court, on a careful consideration of the Status Reports filed by the Superintendents of Police, Thoothukudi and Tirunelveli Districts and the Commissioner of Police, Tiruenveli City, is of the considered opinion that though they have listed out the cases in which the petitioner had allegedly been involved, the name of the petitioner did not find place in the said FIRs. The Superintendents of Police, Thoothukudi and Tirunelveli Districts, who also appeared through Video Conferencing before this Court, asserted that the name of the petitioner had not been found place in the FIRs., registered in the 81 cases that have been transferred to the CBI for investigation.

32. Considering the above, this Court is at loss to understand as to how the respondents 1 and 2, merely relying on the above report of the third respondent, which does not disclose the position of 81 cases referred to CBI and without getting any report from the CBI and without resorting to any enquiry, has declined his enrollment. Hence, this Court has no hesitation to hold that the enrollment of the petitioner as an Advocate is unjustly being denied to the petitioner and therefore, necessary directions are to be issued to the respondents 1 and 2 to enroll the petitioner as an Advocate on the Roll of Bar Council of Tamil Nadu and Puducherry.

33. In the result, the Writ Petition stands allowed and the respondents 1 and 2 are directed to enroll the petitioner as an Advocate on the Roll of Bar Council of Tamil Nadu and Puducherry in the next enrollment exercise. No costs.

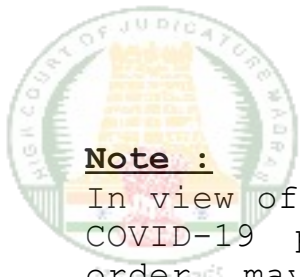
Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Secretary,
Bar Council of Tamil Nadu
and Pondicherry,
Madras High Court Campus,
Chennai - 600 104.

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

3.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-29806[F] dated 21/09/2021)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-30098[F] dated 23/09/2021)

W.P(MD)No. 3609 of 2021
21.09.2021

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