

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.6342 of 2013

MP No.1 of 2013

1. M.Palanisamy
2. P.Vijayalakshmi

..Petitioners

Vs.

1. The Bar Council of Tamil Nadu,
Represented by its Secretary,
Bar Council Building,
High Court Campus,
Chennai 600 104.

2. The Trustee Committee,
Tamil Nadu Advocates Welfare Funds,
Represented by its Secretary,
Bar Council Building, High Court Campus,
Chennai 600 104

..Respondents

Prayer :- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus to call for the records of the 2nd respondent in Resolution No.146 of 2011 dt 18.8.2011 and the consequential order in Tamilnadu Advocates Welfare Funds No.2792 of 2011 dt 10.12.2011 and quash the same and consequentially direct the 2nd respondent to sanction the death benefit of Ms.P.Vidhya Nandhini Advocate to the petitioners.

For Petitioners :Mr.T.Gowthaman

For Respondents :Mr.C.K.Chandrasekar

O R D E R

The subject matter of challenge in the present writ petition pertains to the resolution passed by the 2nd respondent dated 18.08.2011 and for a consequential direction to the 2nd respondent to sanction the death benefit to the petitioners.

2. The case of the petitioners is that their daughter was a practicing advocate, who was enrolled with the 1st respondent in the year 2003. The further case of the petitioners is that on 18.02.2010, their daughter made an application to enroll herself as a member of the Tamil Nadu Advocate Welfare Funds. The petitioner claims that she was also admitted as a Member on the same day. However on the very same day, she unfortunately met with an accident and died.

3. The petitioners made an application to the 2nd respondent for sanction of death benefit. The 2nd respondent through resolution dated 18.08.2011 rejected the application made by the petitioners on the ground that the registration was made in the name of a dead person and it had taken place after the death of the daughter of the petitioners. Aggrieved by the same, the present writ petition was filed before this Court.

4. Mr.T.Gowthaman, learned counsel for the petitioner and MR.C.K.Chandra Sekar, learned counsel for respondents.

5. On a careful reading of the resolution passed by the 2nd respondent, it can be seen that the registration form was received from the daughter of the petitioners on 18.02.2010 and it was placed before the Trustee committee in the meeting held on 30.07.2010. The committee without knowing that the daughter of the petitioners had died by then, admitted her as a member in to the funds on 30.07.2010. It was only after the receipt of the claim application, the 2nd respondent came to know that on the date of the admission of the application, the applicant was no more and hence, admitting a person who has already died, is non-est in the eye of law. It is under these circumstances, the claim made by the petitioners was rejected by the 2nd respondent and the same has been made a subject matter of challenge before this Court.

6. It is quite unfortunate that an advocate who was aspiring to succeed in the profession, died in an accident leaving behind her parents who are the petitioners in this writ petition. The Trustee Committee while admitting the name of the deceased Advocate was not aware that she died on 18.02.2010 itself and hence, admitted a dead person on 30.07.2010. Such an admission is non-est in the eye of law. Hence, the claim made by the petitioner for settlement of the death benefit was rightly rejected by the 2nd respondent and this

Court does not find any ground to interfere with the same. Even though the sympathy of this Court goes with the deceased Advocate, this Court cannot issue a mandamus in violation of the existing rules. In view of the above discussion, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1. The Bar Council of Tamil Nadu,
Represented by its Secretary,
Bar Council Building,
High Court Campus,
Chennai 600 104.
2. The Trustee Committee,
Tamil Nadu Advocates Welfare Funds,
Represented by its Secretary,
Bar Council Building, High Court Campus,
Chennai 600 104

+1cc to Mr.T.Gowthaman, Advocate SR.No.38502

W.P.No.6342 of 2013

RSI(CO)
CB(12/07/2022)