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WP No. 7429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.7429 of 2023
and
WMP.No.7508 of 2023

C. Elangovan

.. Petitioner

Versus

1. Mr. P.S. Amalraj
The Chairman,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Buildings,
Chennai - 600 104.
2. The Secretary,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Buildings,
Chennai - 600 104.
3. Mr. G. Mohana Krishnan
Co. Chairman,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Buildings,
Chennai - 600 104.
4. Mr. D. Saravanan
Co.Chairman,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Buildings,
Chennai - 600 104.



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Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, quashing the order in R.O.C. No.1651/2022, dated 01.09.2022 passed by Second respondent under Resolution No.580/2022 dated 26.08.2022 passed by the General Council of the Bar Council of Tamil Nadu & Puducherry as illegal and unconstitutional and direct the respondents to jointly and severally pay to the petitioner a sum of Rs.7,59,500/- as compensation for his mental agony and loss of income for the illegal suspension with costs.

For Petitioner : Mr. C. Elangovan
Party - in - Person

For R2 : Mr. M.R. Jothimanian

ORDER

(Order of the Court was made by **R. MAHADEVAN. J.**)

Seeking to quash the order dated 01.09.2022 of the second respondent, based on the Resolution No.580/2022 dated 26.08.2022 passed by the General Council of the Bar Council of Tamil Nadu & Puducherry and consequently direct the respondents to pay jointly and severally a sum of Rs.7,59,500/- as compensation to the petitioner for his mental agony and loss of income due to illegal suspension, this writ petition came to be filed by the petitioner.

2. According to the petitioner-in-person, he has enrolled as an advocate before the Bar Council of Tamil Nadu & Puducherry vide Roll No.

<https://www.mhc.tn.gov.in/jsp/> Ms.792/1990 on 21.09.1990. He is the founder and President of Inhabitants



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Puducherry Advocates' Welfare Association (IPAWA) bearing Registration No.

S.141/2021. It is stated by the petitioner that an application dated 16.03.2022

was made to the second respondent in Form II under Section 16 (2) read with

Rule 11 of the Advocates Welfare Fund Act, 2001 to recognise the said

association. However, without any notice, on 08.04.2022 at about 12.30 a.m,

the respondents 3 & 4 visited the association in the guise of an inspection, but

no inspection was conducted in the presence of the petitioner or any other

competent office bearers of the association. Thereafter, no information was

received from the Bar Council. Notwithstanding the application submitted to

recognise their association, the association made a representation to the

Principal District Judge to provide a room in the Puducherry Integrated Court

Complex to carry out the activities of the association, but the same was rejected

by the Registrar General, Madras High Court, vide letter dated 14.06.2022

stating that the association was unrecognised by the Bar Council of Tamil

Nadu & Puducherry. Therefore, the petitioner contacted the third respondent

through whatsapp and also sent some messages. While so, on 01.09.2022, in

all the televisions and news channels it was telecasted that the Bar Council of

Tamil Nadu & Puducherry suspended the petitioner from practicing due to the

alleged misconduct that he was forcing the association members to pay bribe to

him. On the same day viz., 01.09.2022, without serving a copy of the



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complaint, a show cause notice was issued to the petitioner, in which, reference was made to the Resolution No.580/2022 passed by the second respondent, prohibiting the petitioner from practicing as an advocate. On 07.09.2022, the petitioner personally met the Secretary of the Bar Council of Tamil Nadu & Puducherry and requested him to furnish copies of the complaint along with report of visit by the respondents 3 and 4 and the Resolution No.580/2022, but they were not given to him. However, he came to know that in the report, it was stated that their association was started with a bad motive and it must be closed. The report also states that Mr. A. Pugalendhi had resigned his membership from IPAWA on and from 26.06.2022 itself. The petitioner also came to know that on 08.04.2022, the respondents 3 and 4 visited the association premises and submitted a report nearly after 135 days and the reason for the delay was not explained in the report. In any event, without proper enquiry or serving any show cause notice, the petitioner was suspended from his practice from 01.09.2022. He submitted his reply dated 16.09.2022 and also sent remainder letter on 29.11.2022 to the respondents 1 & 2 to revoke the suspension order. From 01.09.2022 to till the date of filing of this writ petition, no enquiry was commenced by the respondents and the petitioner continued to remain under suspension, nearly about 173 days. Due to such prolonged suspension, he lost his income, besides suffering from severe mental



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agony. The prohibitory order dated 01.09.2022 is a foul game, because the petitioner has already filed two writ petitions namely WP. Nos. 17976 and 26757 of 2019 seeking direction to implement and enforce the Advocates Welfare Fund Act, 2001 in Puducherry Region and the same are pending. In these writ petitions, the Bar Council of Tamil Nadu and Puducherry is one of the respondents and till today, no counter was filed by the respondents. Therefore, challenging the prohibitory order dated 01.09.2022, besides seeking compensation for the illegal suspension, the petitioner has come up with this writ petition.

3. The learned counsel appearing for the second respondent submitted that in the inspection report dated 20.08.2022 submitted by the respondents 3 & 4, it was stated that the Bar Council has intimated about the inspection date and time vide R.O.C. No. 683 / 2022 dated 05.04.2022. Pursuant to the letter dated 05.04.2022, the respondents 3 & 4 have carried out an inspection, besides conducted an enquiry as contemplated under Section 16 of the Advocates Welfare Fund Act, 2001 and Section 12(1) of the Puducherry Advocates' Welfare Fund Rules, 2008 in respect of newly formed Inhabitants Puducherry Advocates' Welfare Association. At the time of the inspection, the inspection team came to know that the association was not functioning inside



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the Court premises, but the association office is situated almost one kilometer away from the Puducherry Combined Court Campus. The association is functioning in an advocate office in a very small room with less than 50 sq.ft. of built up area and no proper facility has been provided for functioning an association. Further, they verified the documents pertaining to the list of members in the association, which contain the names of seven persons as members. Out of the seven, few members have not cleared AIBE examination so far. After detailed verification, the committee came to know that they are the team of advocates, who contested in the previous election held in Puducherry Bar Association. This new association is started only to defeat the election to Puducherry Bar Association, which seems to be a personal problem among the advocates of the association. The committee was therefore of the view that the recognition to the newly formed association viz., Inhabitants Puducherry Advocates' Welfare Association is not warranted and their request for recognition may be rejected. Thus, the committee has recommended that the seven members of the newly formed association shall have a peace talk and settle their grievances with the parent Association viz., Puducherry Bar Association. If the Association of this nature is recognised, it will set a wrong precedent to others. It was further stated therein that similar associations are mushrooming through out the State. When an association is already



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functioning, it should be taken note of and a rival association which is already functioning in the same District, should not be given recognition. The Bar Council is taking serious efforts in bringing various associations into one single association at various court complexes, as per the orders of this Court. In the present case, the President and Joint Secretary of the Association were trying to influence both the committee members. They received number of calls from them and also unwanted messages. Therefore, the committee requested the Council to take proper action against the two members namely Mr.C.Elangovan, President and Mr.A.Pugalendhi, Joint Secretary, Inhabitants Puducherry Advocates' Welfare Association. Based on the same, the order of suspension dated 01.09.2022, came to be passed against the petitioner and hence, the same does not require any interference by this court. Thus, the learned counsel submitted that the relief prayed for in this writ petition need not be granted and the petitioner may be directed to participate in the enquiry, if any, conducted and prove his innocence.

4. Heard the Petitioner-in-person and the learned counsel for the second respondent and also perused the materials available on record carefully and meticulously.

5. The facts remain undisputed are that the petitioner made an



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application on 16.03.2022 to the second respondent, seeking recognition of the newly started association by name Inhabitants Puducherry Advocates' Welfare Association, of which, he is the President and one A.Pugalendhi is the Joint Secretary. In connection with the same, the respondents 3 and 4 who are the members of the second respondent Council, visited the premises of the association, made enquiry and filed their report to the second respondent, with an opinion that the request of the association seeking recognition, may be rejected, besides alleging that the President and Joint Secretary of the association were trying to influence the respondents 3 and 4 and they sent numerous calls and messages to their mobile phones and hence, proper action be taken against them. Based on the said report of the respondents 3 and 4, *vide* prohibitory order in R.O.C. No.1651/2022 dated 01.09.2022 passed by the second respondent, the petitioner was prohibited from practising as an advocate in any court of law, pending disposal of the disciplinary proceedings. Therefore, this writ petition came to be filed by the petitioner.

6. According to the petitioner, he was not served with any complaint / report filed by the respondents 3 and 4 and copy of the resolution no.580/2022 dated 26.08.2022, based on which, the impugned order came to be passed against him; and that, no enquiry was conducted and he was not



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provided any opportunity to defend his case. However, he was suspended from practising as an advocate by the order impugned herein, which is arbitrary, illegal, and in violation of the principles of natural justice. Placing reliance on the decision of a Division Bench of this court in the case of *K.Sathyabal v. Bar Council of Tamil Nadu and Puducherry rendered in WA.No.499 of 2016 etc. batch dated 21.03.2016*, the petitioner sought to revoke the prohibitory order passed against him. It is also submitted that the respondents 3 and 4 have not conducted any enquiry with regard to the claim of the petitioner seeking recognition for the newly started association, but they have made 3 minutes visit of the premises of the association, without prior intimation. Stoutly refuting the allegation made by the respondents 3 and 4 that the petitioner has tried to influence them and offer bribe for getting recognition, the petitioner stated that through whatsapp message, he enquired whether the formalities for recognition were over or yet to begin and he had not made any conversation with the members of the committee. Thus, according to the petitioner, mere conversation with the members of the committee does not amount to illegal and professional misconduct, warranting suspension from practicing as an advocate.

7. On a perusal of the order impugned herein, it is evident that based



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on the report of the respondents 3 and 4, the petitioner was prohibited from practising as an advocate in any court of law, Tribunal, etc., till the disposal of the disciplinary proceedings initiated against him. However, no concrete materials have been produced in support of the allegations raised against the petitioner, in the report dated 20.08.2022 filed by the respondents 3 and 4. Except the narration of the whatsapp message, nothing else is even whispered therein. That apart, no opportunity of hearing was provided to the petitioner to put forth his reply either in writing or orally, before suspending him from practising as an advocate and no documents, based on which, he was suspended, were served on him, which is clearly in violation of the principles of natural justice. Therefore, this court has no hesitation to set aside the prohibitory order dated 01.09.2022 passed by the second respondent against the petitioner herein.

8. At this juncture, it is important to point out that the petitioner / party-in-Person, during the course of hearing, has filed a memo of undertaking dated 21.06.2023, wherein it is stated that on 10.06.2022, he sent a whatsapp message to Mr. Mohana Krishnan, the enquiry officer/Co-Chairman regarding recognition of the petitioner association and thereafter, he did not sent any whatsapp message to him. The petitioner has also stated in the said memo of



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undertaking that he will not send any whatsapp message to the enquiry officer/Co-Chairman in future; and declared that he has no personal intention to disrespect the members of the enquiry officer / Co - Chairman or in arraying them as party respondents to this writ petition. Further, the petitioner has filed another memo dated 30.08.2023, requesting this court to pass appropriate orders, with respect to disposal of the case registered against him, by the disciplinary committee, within the time stipulated in accordance with the provisions of law and also the representation seeking recognition for the newly started Association.

9. Recording the memo of undertaking dated 21.06.2023 filed by the petitioner, the order impugned herein, prohibiting the petitioner from practising as an Advocate, is set aside. However, the consequential relief sought by the petitioner seeking compensation from the respondents, cannot be granted, in view of the pendency of disciplinary proceedings initiated against him. Therefore, the disciplinary committee of the second respondent Council is directed to complete the enquiry and pass final orders, on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner, as expeditiously as possible. As regards the representation seeking recognition for the association in question, it is left open to the second



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respondent to decide the same, on merits and as per law.

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10. This writ petition stands disposed of, in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

(R.M.D., J.) (M.S.Q., J.)
04.10.2023

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Internet : Yes / No

Index : Yes/No

To

The Secretary,
Bar Council of Tamil Nadu & Puducherry,
Madras High Court Buildings,
Chennai - 600 104.



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and
MOHAMMED SHAFFIQ, J

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