



WEB COPY



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on : 23.05.2024**

**Pronounced on : 24.05.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**AND**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**W.P.No.13952 of 2024**

T.Susila

... Petitioner

**Vs.**

1. The Bar Council of India,  
21, Race Avenue, Institutional Area,  
Near Bal Bhawan,  
New Delhi – 110 002.
2. The Bar Council of Tamil Nadu  
and Puducherry,  
Rep. by its Secretary,  
Bar Council Building,  
High Court Complex, N.S.C. Bose Road,  
Chennai – 600 104.
3. The Inspector of Police,  
E3, Teynampet police station,  
494, Anna Salai,  
JJ Nagar, Teynampet,  
Chennai – 600 006.
4. The Inspector of Police,  
Fort Police station,  
Singarathope,



Tiruchirappalli – 620 002.

... Respondents

WEB COPY

**PRAYER:** Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to permit the petitioner to enrol as an Advocate on the roll of the second respondent based on the application of the petitioner dated 07.12.2021 bearing No.PR1220419 and the representation made by the petitioner to the second respondent dated 10.05.2024.

For Petitioner : Mr.L.Ragesh Bhagavath

For R-1 & R-2 : Mr. C.K.Chandrasekaran

For R-3 & R-4 : Mr.A.Damodharan,  
Additional Public Prosecutor.

\*\*\*

### **ORDER**

Heard the learned counsel on either side.

2. The writ petitioner herein belongs to Scheduled Caste(Hindu Parayar). She successfully completed her Law degree in the Trichy Government Law College in the year 2021. Her father is unemployed as he is visually impaired. Her mother is a daily wage earner and scavenger. The petitioner is a first graduate in the family. The petitioner applied to the Bar



Council for enrolment as an Advocate. The application was submitted way back on 07.12.2021. Even though the petitioner had submitted the representations, till date she could not move the enrolment application. In this background, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He also referred to a catena of case laws enclosed in the typed set of papers. He called upon this Court to grant relief as prayed for.

4. The learned counsel appearing for the jurisdictional police submitted that the petitioner could not succeed in getting the FIR registered against her quashed. The fact remains that as on date the petitioner figured as an accused in more than one criminal case. He called upon this Court to dismiss the writ petition.

5. The learned Standing counsel appearing for the Tamil Nadu Bar Council strongly submitted that the Bar Council of Tamil Nadu and Puducherry is merely following the dictum issued by this Court. He submitted that the petitioner cannot deny her involvement in the criminal



case. He emphasized that the Bar Council is statutorily mandated to maintain the purity of process and that therefore keeping out the applicants and legally qualified persons from enrolling as Advocates would serve larger public interest. He called upon this Court to dismiss the writ petition.

6. We carefully considered the rival contentions and went through the materials on record.

7. The petitioner is a woman. She belongs to Scheduled Caste. Her mother is a scavenger. Her father is visually impaired. She is a first graduate in the family. These facts cannot be disputed. The petitioner had successfully obtained Law degree in the year 2021 itself. The question is whether the Bar Council is justified in declining to permit to enrol herself as an Advocate. Almost three year have elapsed. Let us not go into the issue of delay. The question that calls for consideration is whether the enrolment of the petitioner deserves to be deferred any further. Article 19(1)(g) of the Constitution of India guarantees to all citizens, the fundamental right to practise any profession. This of course is not absolute right. It is subject to reasonable restrictions set out in Article 19(6) of the Constitution of India. Article 19(6) reads as follows:-



(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

8. A careful reading of Article 19(6) indicates that the reasonable restrictions can be imposed on the fundamental right conferred by Article 19(1)(g). The restrictions should be reasonable and the State is not prevented from making any law relating to technical qualifications



necessary for practising the profession. The Parliament enacted the Advocates Act, 1961. Section 24-A of the Act catalogues the disqualifications for enrolment. The said provision reads as follows:-

- “24-A. Disqualification for enrolment.-**(1) No person shall be admitted as an advocate on a State roll-
- (a) if he is convicted of an offence involving moral turpitude;
  - (b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);
  - (c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation.-In this clause, the expression “State” shall have the meaning assigned to it under article 12 of the Constitution:

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or, as the case may be, removal.



(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).”

9. A bare reading of Section 24-A of the Act indicates that the said provision has no application to the petitioner. This is because, the petitioner has not been convicted of any offence at all. The petitioner was admittedly a student leader. The cases registered against the petitioner are rather political in nature. They involve participation in agitations. Since she has not been convicted and has not been dismissed or removed from employment, obviously, Section 24-A cannot be invoked against the petitioner at all.

10. Of course Section 24(1)(e) of the Act states that subject to the provisions of the Act and Rules made thereunder, a person shall be qualified as an Advocate only if he fulfils such other conditions as may be specified in the rules made by the State Bar Council. Even according to the Bar Council, no rule had been framed by them for declining to entertain the enrolment application by citing mere implication in criminal cases not



WEB COPY

involving moral turpitude of the applicant in criminal cases. According to the Bar Council, the only bar is judicial order passed by this Court. (***Order dated 06.10.2015 in Crl.O.P.(MD)No.14573 of 2014(S.M.Anantha Murugan V. Chairman, Bar Council of India, New Delhi)***). The sentiments expressed by the Hon'ble Judge are no doubt laudable. But there is no ratio underlying the said direction so as to disqualify even candidates in whose cases there is no moral turpitude involved.

11. Our attention has been drawn to the decisions taken by the subsequent Division Benches. Vide ***order dated 21.09.2021 in W.P.(MD)No.3609 of 2021(K.Siva V. The Bar Council of Tamil Nadu and Pondicherry)***, the Hon'ble Division Bench directed the Bar Council to enrol the petitioner. In some cases, the matters were remanded and the Bar Council was directed to take decision.

12. The Hon'ble Madhya Pradesh High Court vide order dated ***11.09.2018 in W.P.No.11350 of 2018 (BRAJ MOHAN MAHAJAN Vs BAR COUNCIL OF STATE OF MADHYA PRADESH & OTHERS)*** had held that Section 24(1)(e) of the Act cannot override Section 24-A of the Act.



13. The right to practise any profession is a constitutionally guaranteed fundamental right. Any clause restraining the exercise of the fundamental right has to be strictly construed and kept within its bounds. The restriction clause cannot receive expansive or liberal interpretation. Section 24-A of the Advocates Act sets out the circumstances that may disqualify the applicant from being enrolled as an Advocate. Unless the applicant falls within the scope of Section 24-A, the applicant's enrolment ought not to be rejected. In this case, when the application was submitted, there is nothing on record to show that the petitioner was ever aware of her implication in any criminal case. We will proceed on the premise that what position obtaining on the date of enrolment is material. Even if the worst case is put against the petitioner, still it is obvious that the petitioner cannot be accused of having committed an act of moral turpitude. We went through the FIRs registered against the petitioner. It is true that this Court declined to quash one of the FIRs. But we independently come to the conclusion that the criminal cases registered against the petitioner do not involve any act of moral turpitude. Therefore, we are of the view that the petitioner has made out a case for enrolment. However, as rightly pointed out by the learned Standing counsel appearing for the Bar Council, we will not fault the Bar Council for having followed the directions issued by this Court. In view of



the reasons already mentioned, we direct the respondents 1 and 2 to permit the petitioner to enrol as an Advocate on the rolls of the State Bar Council at the earliest. This writ petition stands allowed. No costs.

(G.R.S.,J)

(P.B.B.,J)

**24.05.2024**

Internet : Yes/No  
Index : Yes/No  
NCC : Yes/No

PMU

**To:**

1. The Inspector of Police,  
E3, Teynampet police station,  
494, Anna Salai,  
JJ Nagar, Teynampet,  
Chennai – 600 006.
2. The Inspector of Police,  
Fort Police station,  
Singarathope,  
Tiruchirappalli – 620 002.



WEB COPY



**G.R.SWAMINATHAN, J.**

**AND**

**P.B.BALAJI**

PMU

**W.P.No.13952 of 2024**

24.05.2024