



WEB COPY



W.P.No.17058 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

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

Writ Petition No.17058 of 2019
and
WMP.Nos. 16611, 16612, 16613 and
16614 of 2019 and 17208 of 2023

N.Yuganathan

.. Petitioner

Versus

1. George Town Bar Association
represented by its Secretary / President,
George Town Court Campus,
Chennai 600 001.
2. George Town Bar Election Committee,
Represented by its Chief Election Officer,
Mr.M.L.Jagan,
George Town Bar Association,
George Town Court Campus,
Chennai 600 001.
3. The Registrar of Societies,
Under the Tamilnadu Societies Registration Act,
Kuralagam Buildings,
Chennai 600 104.
4. The Bar Council of Tamilnadu and Puducherry,
Rep by its Secretary, High Court Campus,
Chennai 600 104.



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5. The Madras High Court Advocates Association
represented by its Secretary,
Madras High Court Buildings,
Chennai 600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in respect of the impugned order of the fourth respondent herein in TNECR No.12/2019, dated 03.06.2019, and quash the same.

For Petitioner	:	Mr.D.S.Rajasekaran for Mr.P.G.Thiyagu
For R1 and R2	:	Mr.Krishnamurthy
For R4	:	Mr.C.K.Chandrasekhar
For R3 and R5	:	No appearance

ORDER

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

Heard all the parties and perused the documents enclosed in the typed set of papers.

2. This writ petition has been filed by the petitioner praying to set aside the order dated 03.06.2019 passed by the fourth respondent in TNECR No.12 of 2019.

3. The case of the petitioner as projected in the writ petition is as follows:

3.1. The first respondent is an Advocate Association functioning in the premises of George Town Metropolitan Magistrate Court Campus and is



governed by its bye-laws. The petitioner is a practising Advocate and is a member of the first respondent Association. The first respondent issued a notification dated 01.03.2019 scheduling Elections on 05.04.2019 to elect the office bearers of the first respondent Association and the petitioner was a contestant for the post of Librarian. Following the same, an Election committee headed by one M.L.Jegan, as Chief Election Officer, was constituted by the first respondent. While so, on 20.03.2019, in the evening, the second respondent / Election Committee called upon the petitioner and three other candidates to clarify about their suspension from the Bar on account of not passing AIBE Examination and on obtaining clarifications, the petitioner's nomination was accepted along with that of one H.Karunakaran. Upon receipt of the notice dated 20.03.2019, the petitioner filed a writ petition before this Court and his candidature was accepted at the SR stage itself. Out of the total 7 Election Officers, 2 had resigned and no persons were inducted in their place and without requisite quorum in the Election Committee, the election process was carried on, and even on 21.03.2019, the petitioner sent a representation to the respondent authorities narrating the entire facts and circumstances of the conduct of the affairs of the first respondent.

3.2. In the mean time, the nomination of one Arumugam and that of

Ismail were not accepted and as a result of the same, the said Arumugam filed



representations to the third and fourth respondents herein. In view of the same, the fourth respondent passed an order of *status quo* in TNECR No.12 of 2019 and on 01.04.2019, framed guidelines for the conduct of elections and further directed the second respondent to consider the candidature of the said Arumugam in a fair manner. Thereafter, the fourth respondent passed an order on 08.04.2019 appointing 3 additional persons as Election Officers and further ordered that the earlier election proceedings stood abated and that the order passed by the second respondent against the said Arumugam is non-est and postponed the election until further orders. In order to circumvent the order dated 08.04.2019 passed by the fourth respondent, the first respondent issued a notice dated 10.04.2019 appointing one M.Venugopal, A.K.M.Samsu Nihar and K.B.Sathish Kumar as Election Officers in the place of already resigned Election Officers, but subsequently, withdrew the same. On 30.04.2019, the fourth respondent herein passed an order allowing the candidature of the said Arumugam and other similarly placed candidates and postponed the election to 07.06.2019. Further, the fourth respondent had finalised and confirmed the final list of voters of the first respondent herein to be at 442 members.

3.3. When things stood thus, on 08.05.2019, the second respondent represented by its Chief Election Officer issued a notification contrary to the order of the fourth respondent dated 30.04.2019 stating that new members



favour of the same and accordingly, it has been decided to give voting right to the new voters. In this regard, the petitioner gave representations dated 09.05.2019 and 14.05.2019 to the fourth respondent, pursuant to which the second respondent issued a notification for the conduct of elections stating that only the 442 members allowed by the fourth respondent will be allowed to vote. After conducting enquiries, the Chief Election Officer filed an affidavit before the fourth respondent stating that 96 new members have prayed for voting rights. Thereafter, the fourth respondent, by way of passing the impugned order dated 03.06.2019, granted voting rights to the said 96 members, without verifying their particulars.

3.4. With the above background, the petitioner has come up with the present writ petition for the aforesaid relief.

4. The grounds raised by the writ petitioner are that when the Bye-Laws of the first respondent are not stated to be in violation or derogation of the statutes, granting of voting rights to the new 96 members by the fourth respondent by the impugned order, cannot be sustained in the eye of law. Once the fourth respondent had finalised 442 members, it is not correct to add or delete the members and hence, the act of the second respondent adding 96 new



members are not within the definition of ordinary members as defined under Rule 8(c) of the Bye-Laws of the first respondent herein and therefore, they are not entitled to vote. If at all voting rights are given to the new members, the Bye-Laws have to be amended. It is also stated that the second respondent is not a competent authority to act in derogation to the Bye-Laws of the first respondent and such act without constituting the General Body Meeting is a colourable exercise of power. The learned counsel further submitted that the notice dated 08.05.2019 of the second respondent does not have any legal status. It is also specifically stated that by passing an order granting voting rights, the fourth respondent cannot override their own Resolution No.423 passed on 15.12.2012. It is stated that reasonable restrictions can be imposed on members for the purpose of voting and mere membership does not automatically confer a right to vote. The fourth respondent ought to have verified as to whether all these 96 persons have completed one year from the date of enrolment with the Bar Council and one year from the date of enrolment with the first respondent herein, before giving them the right to vote. Finally, it is stated that even though the first respondent has not complied with statutory formalities as envisaged under Section 16(3) of the Tamil Nadu Societies Registration Act, 1975 and despite knowing the same, the third respondent who is the statutory authority to enforce such compliance, remains



5. On 02.07.2019, when this writ petition was taken up for consideration, this Court passed an order deferring the election scheduled to be held on 05.07.2019 until further orders. For better appreciation, the relevant passage of the said order is extracted below:

"7. To verify as to whether these members are practising and whether they have opted for voting in George Town Bar Association, it is appropriate to direct the Bar Council of Tamil Nadu and Puducherry to appoint an Outsider Committee consisting of advocates who have sufficient years of experience and practicing in other courts and who are not the members of George Town Bar association to find out the place of practice and the option of voting of (442 + 96) members from the records of the Bar Council of Tamil Nadu and Puducherry. If these members already belong to any association and have voting rights in respect of that association, they cannot be allowed to exercise their voting right in respect of any other association, other than the one in which they have chosen to be a member, or else it would amount to violation of above said rules as well as the judgment of the Division Bench of this Court. If any of the members try to act in violation of the rules and the aforesaid judgment of this Court, it is open to the Bar Council of Tamil Nadu and Puducherry to suspend them and also to take appropriate disciplinary proceedings against them. If a lawyer does not obey the Court's order, this Court cannot expect others to do the same. An Advocate should be a role model for others to be emulated. Therefore, the election scheduled to be held on 5th July, 2019 to George Town Bar Association shall stand deferred until further orders. The Outsider Committee shall decide about the eligibility of (442 + 96) members and file a report before this Court on the next hearing date so as to facilitate this Court to pass further directions with regard to the conduct of elections. Notice."

6. The main grievance expressed on the side of the petitioner is that the second respondent represented by its Chief Election Officer issued a notification contrary to the order of the fourth respondent dated 30.04.2019 stating that new members have requested for voting rights and that, majority of Election Officers were in favour of the same and accordingly, it has been decided to giving voting right to the new voters. The voting rights have been



granted to 96 new members. According to the petitioner, the action of giving voting rights to 96 new members is unsustainable if it is stated that the Bye-Laws of the first respondent are not in violation or derogation of the statutes. Secondly, the new members are not within the definition of ordinary members as defined under Rule 8(c) of the Bye-Laws.

7. It is seen from the records that already 442 members have been finalised by the fourth respondent. In the interim order passed by this Court on 02.07.2019, as extracted above, the counsel for the petitioner had admitted that they are ready to abide by the order passed by the Committee as the same were passed in the larger interest of the Advocates. The election was scheduled to be held on 05.07.2019. Now, we are in the year of 2024 and about five years had elapsed and much water had flown under the bridge. No information has been brought to the knowledge of this Court as to whether the verification as regards adding of 96 members, has been completed or not. In such circumstances, due to efflux of time, the order impugned herein does not survive, in the opinion of this court.

8. At this juncture, the learned counsel for the petitioner submitted that the Chairman of the Election committee is no more and the Election committee has to be reconstituted, for the purpose of conducting elections of the first



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9. Considering the facts and circumstances of the case and taking note of the submissions made by the learned counsel appearing for the parties, without going into the merits of the case, this court, in the larger interest of the first respondent Association, is inclined to issue the following directions:

(i)The verification of 96 new members, who have been granted voting rights, if not completed earlier, has to be completed, and their names be included in the final voters list, in accordance with law.

(ii)The Election Committee shall be re-constituted by the fourth respondent, after following due procedure, as per law.

(iii)The reconstituted Election Committee shall commence the election process of the first respondent Association and complete the same.

(iv)The aforesaid exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

10.This writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
29.01.2024

Index : Yes / No
Internet : Yes / No
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To

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George Town Bar Association
George Town Court Campus,
Chennai 600 001.
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