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WP.No.19064 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

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THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WP.No.19064 of 2024

N.Santhosh Kumar

... Petitioner

Vs.

The Bar Council of Tamil Nadu & Puducherry,
Rep. by its Secretary,
High Court Campus,
Chennai-600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Mandamus, to direct the respondent to consider petitioner's application for enrolment dated 05.04.2022 and pass an order permitting the petitioner to enroll as an advocate.

For Petitioner : Mrs.Selvi George

For Respondent : Mr.C.K.Chandrasekar
Standing Counsel for BCT



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ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The writ of Mandamus has been instituted to direct the respondent to consider the application submitted by the writ petitioner for enrolment and permitting him to enroll as an Advocate in the State roll.

2. Ms.Selvi George, learned counsel appearing on behalf of the writ petitioner would contend that there is no express bar under Section 24 of The Advocates Act, 1961. In the absence of an express bar under the provisions of the Advocates Act, the right of enrollment of the petitioner cannot be denied by the respondent Bar Council of Tamil Nadu. Section 24A of the Advocates Act stipulates disqualification for enrollment. Mere registering of an FIR or pendency of a criminal case therefore, cannot be a bar for enrolling a candidate under the Provisions of the Act. In the present case, an FIR has been registered and the name of the petitioner is not found in the FIR. However, he filed a criminal quash petition before the High Court under Section 482 Cr.P.C. The said quash petition was dismissed. Investigation by the police is in progress. Under such circumstances, the petitioner submitted an application seeking enrollment as an Advocate.



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3. The learned counsel for the petitioner would further submit that the right to practice being a basic right cannot be denied. The survival of the petitioner is affected and therefore, his application seeking enrollment is to be considered by the Bar Council.

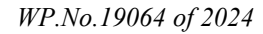
4. Mr.C.K.Chandrasekar, learned Standing Counsel appearing for the respondent would oppose by stating that this Court considered the issues relating to enrollment of a person as an Advocate under the Advocates Act with reference to the pending criminal proceedings. In the case of ***S.M.Anantha Murugan Vs. The Chairman and others*** reported in (2015) 6 CTC 22, a direction has been issued by the High Court in paragraph 101(3) as under:-

“101. Hence, this Court passes the following directions:

1)

2)

3) Bar Council of India shall direct the State Bar Councils not to enrol any law graduate with pending criminal cases except bailable cases attracting punishment upto three years and compoundable offences involving matrimonial, family and civil disputes, till the changes are brought in The Advocates' Act & Bar Council of India Rules.”



*“18. Ever increasing criminalisation of the Bar is not in dispute as recorded by the learned Single Judge in **S.M.Anantha Murugan V. The Chairman, Bar Council of India, New Delhi**, 2015 (6) CTC 22. A perusal of the order passed by the learned Single Judge would show that he has recommended appropriate measures to be taken by the Bar Council of India in this regard. Pending the recommendation, it was ordered to ensure that candidates with serious offences are not allowed to be enrolled. After all, every stakeholder is interested in upholding the dignity of the profession. It is no doubt true that there is no provision as of now barring such persons from getting enrolled. But then, there is no quibble over the power of the Bar Council of India to act accordingly. That is precisely the reason why a direction has been issued by the learned Single Judge. When once the right to practice is governed and controlled by a Statute, then it may not be claimed as absolute. The learned Single Judge has exercised his power under Article 226 of the Constitution of India, which we do not feel arbitrary. Had the recommendation been considered, by this time, the issue would have been resolved finally one way or other. The Division Bench has not taken into consideration the detailed Order passed by the learned*



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*Single Judge in this regard though it may not be binding. The fact remains that the said decision insofar as the issue is concerned, has become final and the Bar Council of India is willing to give its conscious consideration to it. Even the Division Bench seeks to make a difference between different set of offences. In that sense, there is not much of difference in the thinking process adopted by the learned Single Judge in **S.M.Anantha Murugan V. The Chairman, Bar Council of India, New Delhi, 2015 (6) CTC 22** and the Division Bench in **S.Manikandan V. The Secretary, Tamil Nadu Bar Council, Chennai, W.P.No.2309 of 2016 dated 21.10.2016**. The observation of the Division Bench that mere registration of F.I.R would not take away the right to get enrolled has to be seek in its own context. Suffice it is to state that the earlier decision of the learned Single Judge and the observation made by the Division Bench on 30.10.2015 have not been brought to the knowledge of the Division Bench. Thus, Direction No.3 issued by the learned Single Judge would stand.”*

6. The Full Bench judgment in unequivocal terms held that the direction No.3 issued by the learned Single Judge in **Anantha Murugan's** case [cited supra] would stand. The directions issued by the learned Single Judge in **Anantha Murugan's** case [cited supra] was confirmed by the Full Bench directing the State Bar Council not to enroll any law graduate with pending criminal cases except bailable cases attracting punishment upto



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three years and compoundable offences involving matrimonial, family and civil disputes, till the changes are brought in The Advocates' Act & Bar Council of India Rules. Admittedly, no amendment has been brought in nor the Bar Council of India issued any Rules. However, the said judgment remains intact and to be followed by all concern. The Full Bench also confirmed the said directions and therefore, it becomes law as far as the enrollment of a person in the State roll is concerned.

7. Purity in profession is the object and in respect of the High Court directions, it is relevant to consider Section 34 of The Advocates Act, which provides power of High Courts to make Rules. Sub-Section (1) contemplates that the High Courts may make Rules laying down the conditions, subject to which an advocate shall be permitted to practice in the High Court and the Courts Subordinate thereat. Therefore, the condition stipulated in the judgment is to be construed as Rules within the ambit of Section 34 of The Advocates Act and thus the said conditions confirmed by the Full Bench should operate and to be implemented by the Bar Council of Tamil Nadu and Puducherry scrupulously. It is for the petitioner to establish that he is discharged from the criminal case or otherwise on establishing such fact, his



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application to be considered. As on today, the petitioner is facing criminal case and therefore, he is not entitled to secure relief from the hands of this Court.

8. Accordingly, this Writ Petition stands dismissed. No costs.

[S.M.S., J.] [C.K., J.]
01.08.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes

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



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S.M.SUBRAMANIAM, J.
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