

W.P(MD) No.6986 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 07.01.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

W.P(MD) No.6986 of 2015

S.Bhaskarapandian

... Petitioner

Vs.

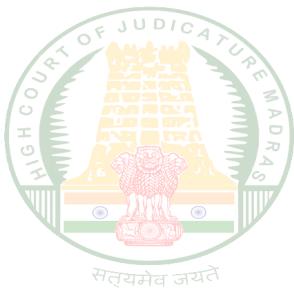
The Chairman / Secretary,
Bar Council of Tamil Nadu,
Madras High Court Buildings,
Chennai-600 104.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondent to enroll the petitioner as an Advocate on the roll of the Bar Council of Tamil Nadu based on the petitioner's application dated 23.07.2014.

For Petitioner : Mr.V.P.Rajan

For Respondent : Mr.C.Susikumar



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ORDER

WEB COPY (Order of the Court was made by G.R.SWAMINATHAN, J.)

The writ petitioner obtained law degree in the year 1984. However, he did not get enrolled as an advocate in view of his appointment as Village Administrative Officer. He retired from service on 30.01.2014. Thereafter, he wanted to enrol himself as an advocate. He submitted his application before the Bar Council of Tamil Nadu on 23.07.2014. His application could not be processed on account of his implication in two criminal cases ie., Crime No.28 of 2013 on the file of the District Crime Branch, Madurai and Crime No.94 of 2014 on the file of the Koodal Pudhur Police Station. Hence, this writ petition has been filed for directing the Bar Council of Tamil Nadu to enrol him as an advocate on their rolls.

2. The petitioner faces a Himalayan impediment. A learned Judge of this Court in the decision reported in **(2015) 6 CTC 22 (S.M.Anantha Murugan Vs. The Chairman)** had directed as follows :



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"(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 Advocate's Act & Bar Council of India Rules."

When a Division Bench of this Court in ***S.Manikandan v. The Secretary, Tamil Nadu Bar Council (WP No.2309 of 2016)*** on 21.10.2016 took a view that mere implication in a criminal case will not come in the way of one's enrolment as an advocate, the matter was referred to a Full Bench. The Hon'ble Full Bench in the decision reported in ***(2017) 5 CTC 113 (Chairman Vs. S.M.Anantha Murugan)*** held as follows :

"19. By way of conclusion, we answer the reference in the following manner:

(I) Direction No.3 issued by the learned single Judge in SMAantha Murugan Vs. The Chairman, Bar Council of India, New Delhi (2015) 6 CTC 22 holds good,

(II) The Bar Council of India is directed to bring forth appropriate amendment as agreed by it within a period of six months from the date of receipt of a copy of this order.



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(III) Direction No.3 issued by the learned single

Judge is only a temporary measure,

(IV) The Judgment rendered by the Division Bench in W.P.No.2309 of 2016, dated 21.10.2016 (S.Manikandan Vs. The Secretary, Tamil Nadu Bar Council, Chennai) has to be understood in the context of Direction No.3 issued by the learned single Judge in SMAAnantha Murugan Vs. The Chairman, Bar Council of India, New Delhi ((2015) 6 CTC 22).

(V) However any such admission if made already shall not be disturbed."

3. Let us come back to the facts on hand. The petitioner's counsel states that for the last ten years, the criminal cases registered against the petitioner continue to remain at the FIR stage. The prosecution had not even taken off. The final reports are yet to be filed. The petitioner is unable to enrol himself as an advocate on account of the aforesaid direction issued by the learned Single Judge which was confirmed by the Full Bench also. It is relevant to note that the Full Bench took the view that the direction itself is a temporary measure. But the fact remains that the Bar Council of India has not issued any direction in this regard and the direction of the learned Single Judge continues to hold the field for more than a decade. However, its effect has been sought



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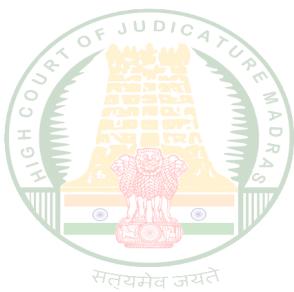
to be overcome by issuing directions in individual cases from time to time.

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4. Right to practise any profession is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. It is of course not an absolute right but subject to reasonable restrictions (vide **N.K Bajpai vs Union of India (2012) 4 SCC 653**). The Parliament had enacted the Advocates Act, 1961. Section 24A of the Act catalogues the disqualifications for enrolment. The said provision reads as follows :

“24A. 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.



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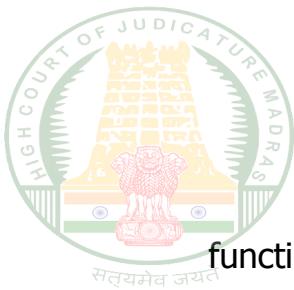
Explanation – In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:

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)."

We are of the view that when a validly passed legislation is occupying the field, it may not be open to the writ court to prescribe further disqualifications in exercise of its jurisdiction under Article 226 of the Constitution of India.

5.A writ petition was filed under Article 32 of the Constitution of India to debar the legislators from practising as advocates during the period when they are legislators. The writ petition was dismissed by the Hon'ble Supreme Court vide order dated 25.09.2018 [**(2019) 11 SCC 683, Ashwini Kumar Upadhyay v. UOI**]. The Hon'ble Supreme Court held that the Bar Council of India has been bestowed with the



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function and duty to regulate enrolments of advocates and the terms
संसदीयमन्त्र नियम

WEB COPY and conditions of professional conduct of advocates. While the right to practise any profession is not an absolute right, the restriction must be expressly stated in the Advocates Act, 1961 or the Rules framed thereunder. When there is no express provision in the Act or the Rules framed thereunder imposing restriction on legislators to continue to practise as advocates, in the absence of an express restriction in that behalf, it is not open to the Court (in that case Supreme Court) to debar the elected people's representatives from practising during the period when they are legislators. It was further observed that the court cannot usurp the functions assigned to the legislature. In other words, sans any express restriction imposed by the Bar Council of India regarding the legislators to appear as an advocate, the relief claimed by the petitioner could not be countenanced.

6. In view of the aforesaid pronouncement of the Hon'ble Supreme Court of India, time has come to revisit the issue. In our respectful view, courts cannot add to what has already been set out as disqualification in Section 24A of the Advocates Act, 1961. In



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Gurudevdatta VKSSS Maryadit and ors v. State of Maharashtra

WEB COPY (2001) 4 SCC 534, the Hon'ble Supreme Court held that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. When the statutory provision talks about conviction as an impediment, it may not be open to the writ court to hold that even implication in a criminal case will operate as a bar for enrolment. We cannot lose sight of the fact that presumption of innocence is a human right (***Narendra Singh v. State of MP, (2004) 10 SCC 699***.

7. Section 24 of the Advocates Act, 1961 deals with persons who may be admitted as advocates on a State Roll. Section 24(1)(e) is to the effect the applicant must fulfil such other conditions as may be specified in the rules made by the State Bar Council. But the Madhya Pradesh High Court vide order dated 11.09.2018 in ***WP No.11350 of 2018 (Braj Mohan Mahajan v. Bar Council of State of M.P)*** held that Section 24(1)(e) of the Act cannot override Section 24A of the Act.



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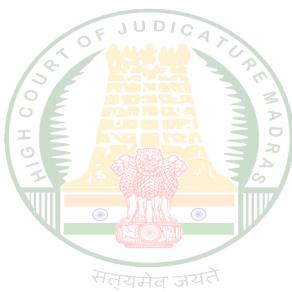
8.A Hon'ble Division Bench in WP No.19064 of 2024 on

WEB COPY 01.08.2024 (***N.Santhosh Kumar v. The Bar Council of Tamil Nadu and Puducherry***)

following ***S.M.Anantha Murugan*** held that 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 be implemented by the Bar Council of Tamil Nadu and Puducherry scrupulously. It was further held that the petitioner therein would be entitled to be enrolled as an advocate only after discharge or acquittal in the criminal case.

9. With the greatest of respect to the Hon'ble Division Bench, we cannot endorse the view that a judicial direction can be construed as a Rule made under Section 34 of the Advocates Act, 1961. Section 34 of the Act reads as follows :

"34. Power of High Courts to make rules.-(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto."



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10. The scope of Section 34 of the Advocates Act, 1961 was dealt with in ***R.Muthu Krishnan v. High Court of Madras (2019) 16 SCC 407.***

When Rules of the High Court of Madras, 1970 were amended and Rules 14A to D were introduced under Section 34(1) of the Advocates Act, 1961, they were struck down as judicial overreach. Rule 14A had empowered debarment of an advocate who browbeats a Judge. The assumption of such drastic powers by the court was frowned upon. It was held that Section 34 intends to regulate the practise of advocates in the High Court and the Subordinate Courts and does not empower it to frame the rules for disciplinary control.

11. If Section 34 will not empower the High Court to frame Rules pertaining to disciplinary jurisdiction, we fail to understand as to how it would authorise imposing conditions for enrolment.

12. Rule making power is conferred under Article 225 of the Constitution of India and also Clause 37 of the Letters Patent on the High Court. Such power is also found in quite a few statutes including CPC. Rule making is a legislative activity. The High Court exercises its rule making power on its administrative side. The Rules have to be



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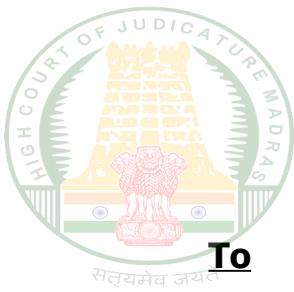
approved by the Full Court. There is always a distinction between the functioning of the High Court on its administrative side and the judicial side.

WEB COPY Even a Full Court decision taken on the administrative side can be quashed by a Division Bench exercising its judicial powers. But by no stretch of imagination, a judicial order passed by a Single Judge can partake the character of a rule made by the High Court.

13. We are, therefore, of the view that in view of the declaration of law by the Hon'ble Supreme Court in ***Ashwini Kumar Upadhyay v. UOI and R.Muthu Krishnan*** cases, the direction given in ***S.M.Anantha Murugan*** case deserves to be revisited. Since a coordinate Division Bench as well as a Full Bench have affirmed the said direction, it would not be open to us to issue any contra direction. We, therefore, direct the Registry to place the papers before the Hon'ble Chief Justice to consider constituting a Larger Bench for resolving the issue.

(G.R.S., J.) & (R.K.M., J.)
07.01.2026

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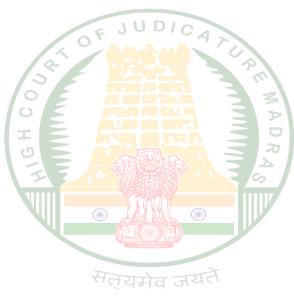


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To

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1. The Chairman / Secretary,
Bar Council of Tamil Nadu,
Madras High Court Buildings,
Chennai-600 104.

2. The Registrar (Judicial),
Madurai Bench of the Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.
AND
R.KALAIMATHI, J.

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