

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.7.2015 & Delivered on: 11.8.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE K.RAVICHANDRA BABU

Writ Petition No.20130 of 2015

R.Nagendran .. Petitioner

Vs.

1. The Chairman
Tamil Nadu Bar Council
High Court Building
Parry's Corner
Chennai 600 104.
2. The Secretary
Tamil Nadu Bar Council
High Court Building
Parry's Corner
Chennai 600 104.
3. State represented by
The Superintendent of Police
Ramanathapuram District
Ramanathapuram.
4. The Chairman
Bar Council of India
New Delhi.
5. The Inspector of Police
B2, R.S.Puram Police Station
Coimbatore.

.. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Mandamus directing the 1st and 2nd respondents to enrol the petitioner as an Advocate in 1st and 2nd respondents Bar Council of Tamil Nadu.

For Petitioner : Mr.S.Thiruvengadam
For Respondents 1 & 2 : Mr.S.Y.Masood
For Respondents 3 & 5 : Mrs.A.Srijayanthi, Spl.G.P.

ORDER

V.RAMASUBRAMANIAN,J.

The petitioner, whose application for enrolment as an Advocate was not entertained by the Bar Council of Tamil Nadu and Puducherry on account of the pendency of a criminal case against him, has come up with the above writ petition seeking the issue of a writ of Mandamus to direct the respondents 1 and 2 to enrol him.

2. Heard Mr.S.Thiruvengadam, learned counsel for the petitioner, Mr.S.Y.Masood, learned counsel appearing for the respondents 1 and 2 and Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the respondents 3 and 5.

3. The petitioner completed a 3 year Law Degree from the Government Law College, Coimbatore in May 2014. It appears that while undergoing the course of study at the Government Law College, Coimbatore, he joined a group of students who organised a demonstration in front of a TASMAL retail vending outlet and Bar bearing No.1734, Lolly Road, Maruthamalai Main Road, Coimbatore. Immediately, the Police registered the First Information Report in Crime No.1190 of 2013 on 30.7.2013 against the entire group of students numbering about 24, including the petitioner herein. It appears that all the students who organised a protest against the sale and consumption of liquor were arrested in the afternoon and let off in the evening. On account of the pendency of the above criminal complaint, the Bar Council did not entertain his application for enrolment, in view of an order passed by a learned Judge of this Court in a petition in CrI.O.P.(MD)No.14573 of 2014. Therefore, the petitioner has come up with the above writ petition.

4. Upon notice to the fifth respondent, namely the Inspector of Police, he has filed a counter affidavit. In the counter affidavit, the fifth respondent has confirmed that a criminal complaint in Crime No.1190 of 2013 was

registered against the writ petitioner and 23 other students of the Government Law College, Coimbatore on 30.7.2013, for organising a demonstration in front of a TASMACH retail vending shop, to protest against the sale and consumption of liquor. It appears that a charge sheet has been filed in STC No.1493 of 2013, but the trial has not commenced. The writ petitioner is the ninth accused in the charge sheet.

5. Therefore, it is contended by Mr.S.Y.Masood, learned counsel for the Bar Council that it is not possible for the Bar Council to enrol the petitioner, when a criminal case is admittedly pending against him. The Bar Council, according to the learned counsel, is bound by the orders passed by this Court in CrI.O.P.(MD) No.14573 of 2014 and that therefore, the Standing Counsel for the Bar Council contended that the petitioner may have to await the outcome of the criminal case.

6. We have carefully considered the above submissions.

7. It is true that by a series of orders passed in CrI.O.P.(MD) No.14573 of 2014, this Court directed that the criminal antecedents of the candidates seeking enrolment should be verified by the Bar Council and that the nobility and purity of the profession cannot be allowed to be sullied by the entry of anti social elements into the profession. But, a careful consideration of the order dated 01.8.2014 passed by the learned Judge would show that the concern expressed by the learned Judge was with respect to anti social elements and persons with criminal antecedents trying to enter into the legal profession, with a view to have a protective gear around themselves. Therefore, the prohibitive order issued by the learned Judge has to be understood in the right perspective and cannot be applied blindfold to all types of cases where criminal complaints came to be registered against individuals.

8. As a matter of fact, this Bench had an occasion to consider two cases arising under extraordinary situations. One related to the registration of a criminal complaint against a person for burning the effigy of a political leader, while participating in a demonstration. Another related to a private complaint of defamation filed against a journalist turned law graduate. In both cases, we directed the Bar Council to permit the enrolment, on the ground that the criminal cases which came to be registered against those individuals could not make those persons as someone with a criminal background, so as to bar their entry into the legal profession.

9. The case on hand is also similar to those two cases. Even as per the averments contained in the First Information Report and the averments in paragraph 1 of the counter affidavit filed by the fifth respondent (Inspector of Police), the only allegation against the writ petitioner was that he organised a demonstration in front of a TASMACH shop, along with 23 other students, seeking the closure of TASMACH shops and the imposition of prohibition.

10. But the right to freedom of speech and expression and the right to assemble peaceably and without arms, are fundamental rights guaranteed under Article 19(1)(a) and (b) of the Constitution. By virtue of clauses (2) and (3) of Article 19, this right is subject to any existing law or a law enacted by the State, imposing reasonable restrictions. Such reasonable restrictions, if they relate to Article 19(1)(a), should have a nexus with (i) the interests of the sovereignty and integrity of India (ii) friendly relations with foreign States (iii) public order (iv) decency (v) morality (vi) contempt of court (vii) defamation or (viii) incitement to offence. But if those reasonable restrictions relate to the right guaranteed under Article 19(1)(b), they should have nexus only with 2 things namely (i) interests of the sovereignty and integrity of India or (ii) public order. In other words, the scope for imposing reasonable

restrictions in relation to the right under Article 19 (1) (b) is very limited only to 2 things when compared to the scope for imposing reasonable restrictions in relation to the right under Article 19 (1)(a).

11. Normally, the District Administration makes use of certain provisions contained in the Chennai City Police Act, 1888, or the Tamil Nadu District Police Act, 1859, or the Police Act, 1861, or Section 144 of the Criminal Procedure Code, 1973, to curtail the fundamental rights of people to assemble peaceably and without arms.

12. In the case on hand, a careful look at the First Information Report shows that in the complaint against the petitioner, it is not stated as though the Commissioner of Police had issued any prohibitory order under Section 41-A of the Chennai City Police Act, 1888, or that the District Superintendent of Police had issued an order under Section 30(2) of the Police Act, 1861, or that an order under Section 144 of the Cr.P.C. had been promulgated.

13. Article 47 of the Constitution mandates that the State shall endeavour to bring about prohibition of the consumption of intoxicating drinks which are injurious to health. Therefore, the cause that the petitioner took up, by way of demonstration, was also a laudable and noble cause imposed by the very Constitution itself as part of the Directive Principles of State Policy.

14. As a matter of fact, Article 51-A inserted by the Constitution 42nd Amendment Act, 1976, lists out about 11 duties as the fundamental duties of every citizen of India. Under clause (a) of Article 51-A, every citizen has a duty to abide by the Constitution and respect its ideals. One of the ideals of our Constitution, as could be seen from a combined reading of the preamble and Article 47, is to raise the level of nutrition and the standard of living of

the people of the country and the improvement of public health. The protest/ demonstration organised by the group of students including the petitioner, was actually towards fulfilment of this fundamental duty.

15. Though we would certainly like students to fulfill their most fundamental duty namely that of studying well while in college, rather than indulging in such activities, we find that there is no allegation in the FIR as if the petitioner indulged in any violent form of protest or in any activity that was likely to cause damage to public property or that the assembly of which he was a part, was unlawful due to the issue of any order under any of the afore mentioned Acts.

15. Therefore, we do not know how the petitioner and other students were alleged in the First Information Report to be part of an unlawful assembly. There is also no allegation in the first information report that the petitioner and his friends indulged in any violent form of protest, causing or threatening to cause damage to public property. The mere fact that the petitioner was part of a group which just stood in front of a liquor shop and shouted slogans, without anything more, cannot make him guilty of an offence, as they were only exercising their fundamental right under Article 19(1)(b) and performing their fundamental duty under Article 51-A, for impressing upon the State, the need to follow the Directive Principle of State Policy enshrined in Article 47. It is not claimed in this case by the State that they had curtailed the fundamental right under Article 19(1)(b) by any order issued in terms of any law coming within the contours of Article 19(2) or (3).

16. Therefore, the writ petition is allowed, directing the respondents 1 and 2 to process the application of the petitioner without reference to the criminal complaint pending against him and take necessary action within a period of four weeks. No costs. Consequently, M.P.No.1 of 2015 is closed.

Index : Yes/No
Internet : Yes/No

(V.R.S.J.) (K.R.C.B.J.)
11.8.2015.

kpl/gr.

To

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Chennai 600 104.
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V.RAMASUBRAMANIAN,J,
and
K.RAVICHANDRABAABU,J.

kpl

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