

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-01-2021

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P. No. 1571 of 2019

V. Madhesh

..Petitioner

Vs.

1. Secretary,
Bar Council of Tamil Nadu and
Puducherry,
High Court Buildings,
Chennai – 104.

2. Special Committee,
Bar Council of Tamil Nadu,
rep. By its Members
Mr.R. Singaravelan,
Sr. Advocate,
Mr.N. Chandrasekharan,

O/o. The Bar Council of Tamil Nadu
and Puducherry,
High Court Buildings,
Chennai – 104.

3. Mr.G. Ponnusamy,
Advocate, President,
Bar Association, Salem.
 4. Mr.K.R.R. Aiyappamani,
Advocate, Secretary,
Bar Association, Salem.
 5. Mr.M. Ahamed Shajahan,
Advocate,
33/11, Chozan West Street,
Salem – 636 001.
 6. Mr.S.D. Manivasagam,
Advocate,
Bar Association, Salem.
 7. Mr.R. Srinivasan,
Advocate,
Bar Association, Salem.
 8. Mr.K. Rajasekaran,
Advocate,
Bar Association, Salem.
 9. Mr. Balakumar,
Advocate,
Bar Association, Salem.
- ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records relating to the order of the 2nd respondent dated 03.01.2019 and the consequential orders dated 07.01.2019 and 11.01.2019 and quash the same.

For Petitioner :: Mr.R. Shanmugasundaram,
Senior Counsel for
Mr.S. Ravi

For Respondents :: Mr.J. Pothiraj for R1
Mr.C.K. Chandrasekar for R2
Mr.M.R. Thangavel for R3
Mr.R. Nalliyappan for R4
Mr.R. Ramanlal for R5
Mr.T.M. Hariharan for R7 to R9

ORDER

N. KIRUBAKARAN, J.

Elections to Advocates Associations or Bar Council are no different from general election to legislature in which invariably, to woo the electorate,

Communal, religious, political cards etc., are played;

Money power is exhibited;

Liquor is generously offered.

Due to unavoidable above corrupt practices, election process in our country has become a mockery.

2. Legal profession is a sevice-oriented noble profession. The

front line leaders who fought for the independence of our country were Advocates. Most of the constituent assembly members were lawyers. The nobility of the legal profession has been expressed in many judgements of the Honourable Supreme Court. The importance of the legal profession, the high standards to be maintained and the ethics to be followed by the Advocates are given in detail in those judgments and a few are as follows:

(i) In **O.P. Sharma v. High Court of Punjab & Haryana, (2011) 6 SCC 86**, paragraph 17 of the Judgement reads as follows:-

“17. The role and status of lawyers at the beginning of sovereign and democratic India is accounted as extremely vital in deciding that the nation's administration was to be governed by the rule of law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of a galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice.”

(ii) In **R.D. Saxena v. Balram Prasad Sharma** reported in **(2000) 7 SCC 264**, it was held that a social duty is cast upon the legal profession to show the people a beacon light by their conduct and actions. The poor, uneducated and the exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession.

(iii) Para 40 of the Judgement of the Hon'ble Apex Court in **Sudha v. President, Advocates' Association, Chennai** reported in (2010) 14 SCC 114 reads as follows:

“40. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The different Associations of the members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyer while exercising vote in an election of office bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about the high standard of the profession are supposed to take appropriate action to see that the election takes place peacefully and in an organised manner.” (Emphasis supplied)

(iv) In **V.C. Rangadurai v. D. Gopalan**, reported in (1979) 1 SCC 308, the Supreme Court outlined the importance of Advocates observing that nothing should be done by any member of the legal fraternity, which might lessen in any degree the confidence of the public, fidelity, honesty and integrity of the profession. The relevant paragraphs 4 and 5, read as follows:

“4. Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the

people - the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human Tomorrow. This desideratum gives the clue to the direction of the penance of a deviant geared to correction. Serve the people free and expiate your sin, is the hint.

5. Law's nobility as a profession lasts only so long as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility - a responsibility towards the people, especially the poor. Viewed from this angle, every delinquent who deceives his common client deserves to be frowned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned counsel for the appellant."

3. However, what is the ground reality has been explained by the Hon'ble Apex Court recently in ***R.K.Anand v. Registrar, Delhi High Court*** reported in ***2009 (8) SCC 106***. Paragraphs 331 and 333 of the said decision reads as follows:

"331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of Court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a Section of lawyers, we find that even some highly successful lawyers seem to live by their own rules of conduct.

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333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the

trend is immediately arrested and reversed, it will have very deleterious consequences for administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a bar that enjoys the unqualified trust and confidence of the people, that share the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.”

The above observations of the Hon'ble Apex Court about legal profession are equally applicable to the elections to Bar Associations. Sadly, our bar leaders are not properly elected by following democratic process, without any malpractices. Present members of the so called "Noble Profession" are readily selling their votes for "Money, Liquor, Foreign Tours, etc.,". This is the practise in almost every election for Association or Bar Council. One bar association election is the subject matter of this case.

4. This Writ Petition has been filed by a member of the Salem Bar Association challenging the order passed by the 2nd respondent/Special Committee dated 03.01.2019 and the consequential orders dated 07.01.2019 and 11.01.2019.

5. According to the petitioner, he is a member of the Salem Bar Association having got enrolled himself as an advocate in 2011. After introduction of Certificate and Place of Practice (Verification) Rules, 2015,

the members of Salem Bar Association submitted their applications with necessary particulars and only those members were permitted to vote in the election conducted for selection of the members of the State Bar Councils held on 28.03.2018 by the Bar Council of Tamil Nadu and Pondicherry. In view of the aforesaid election to State Bar Councils, the election for the Salem Bar Association, which was due in the year 2017, was delayed. Subsequently, a decision was taken in the General Body Meeting held on 14.11.2018 to conduct election for Salem Bar Association. Mr.S.D. Manivasagam, a senior member of the Bar, was requested to act as Election Officer, as he also acted as an Election Officer in the three previous elections.

6. The Election Officer issued the election notification for the election of office bearers of Salem Bar Association for the period 2019-2021 to be held on 11.01.2019. The office bearers include the posts of President, Vice President, Secretary, Treasurer, Librarian, Assistant Secretary, Seven Senior Executive Committee Members and Three Junior Executive Committee Members. The petitioner filed his nomination for the post of Senior Executive Committee Member. The list of candidates also got

published.

7. When things stood so, based on 5th respondent's complaint, the 2nd respondent passed orders on 03.01.2019, 07.01.2019 and 11.01.2019 appointing a Committee consisting of Mr.R. Srinivasan, Mr.K. Rajasekaran and Mr.R. Balakumar to conduct the election to Salem Bar Association. The said orders passed by the 2nd respondent/Special Committee are challenged before this Court.

8. Mr.R. Shanmugasundaram, learned Senior Counsel appearing for the petitioner would submit that the Bar Council of Tamil Nadu and Pondicherry has got no power to constitute a committee to conduct the election, especially, when Mr.S.D. Manivasagam, a Senior Member of the Bar was already appointed to conduct the election by virtue of resolution passed in the Annual General Body meeting held on 14.11.2018. Secondly, the learned Senior Counsel would submit that the 2nd respondent/Special Committee has got no power to prohibit the members to contest more than one election continuously and it has to be decided by two-thirds majority of the members of the association in the General Body. Thirdly, the Committee

members appointed by the 2nd respondent are not neutral persons. Mr.K. Rajasekaran seconded the nomination of one K. Raja, who filed a nomination for the post of President in the election during the year 2019. Similarly, Mr.R. Srinivasan proposed the candidature of K.Raja, who proposed to contest in the election held in 2019. Therefore, the members, who have been nominated by the Special Committee are siding with the some of the candidates and therefore, they cannot act as members of the Committee to conduct the election. As far as 'one bar one vote' is concerned, there is no dispute with regard to the same and it is being followed and the said Rule can be applied for the election for the year 2019-2021.

9. On the other hand, Mr.J. Pothiraj, learned counsel appearing for the 1st and 2nd respondents would submit that based on the complaint given by the 5th respondent, who complained that bulk subscription on behalf of the defaulting members have been made and the members from outstation have been included as voters and one bar one vote Rule has not been followed. After hearing the parties, the Bar Council of Tamil Nadu and

Pondicherry appointed the Special Committee for conducting election to the Salem Bar Association and the same cannot be questioned. The Bar Council has got power under Section 6(1)(dd) of the Advocates' Act, 1961, Section 9A, 13, 14 and 14A of Tamil Nadu Advocates' Welfare Act, 1987 and Rules 6, 9, 14, 15, 18, 21 and 22 of Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015. He also relied upon the order dated 03.06.2019 passed by the Special Committee of the Bar Council of Tamil Nadu and Puducherry in T.N.E.C.R.No.12 of 2019 in *M.Arumugam and others Vs. President/Secretary, G.T.Bar Association and another* to contend that the Bar Council prohibited contesting of election by office bearers of the Association continuously for office bearers post. Therefore, the order of the 1st and 2nd respondents is sustainable and the same cannot be interfered with. Moreover, he would submit that Mr. Rajakumar, Secretary of the Bar Council of Tamil Nadu and Pondicherry, who was directed to attend the General Body meeting to be held on 30.04.2019, though attended the meeting in which 315 members out of 1500 members were present, no voting could be held in view of different and conflicting views expressed. No voting could be conducted on the proposed amendment

to the existing bye-laws by which a prohibition is sought to be imposed on the members, who contest more than one time continuously.

10. The third respondent, the past President who held the post for a number of years opposed the writ petition. However, during the pendency of the writ petition, he passed away.

11. Mr.R.Nalliyappan, learned counsel for the 4th respondent would submit that the 4th respondent is not an influential person and he is ready to obey any order passed by this Court.

12. Mr. Ramanlal, learned counsel appearing for the 5th respondent, on whose complaint, the impugned orders have been passed by the 2nd respondent would contend that the 3rd and 4th respondents connived together to see that some persons are elected continuously without giving any opportunity for others, by hook or crook, including payment of subscription in bulk, inclusion of outside members. The 3rd respondent used to print calendars with his name and photograph as President of Salem Bar Association. Even before the election could be conducted, he had printed

calendars as if he had been already elected. He also used his position as the President of the Association in the vakalath itself to influence the judicial officers. Only to see that outside members are not allowed to vote and 'one bar one vote' is complied with, the impugned orders have been passed rightly by the 2nd respondent/Special Committee. Hence, he opposed the writ petition.

13. Mr.T.M. Hariharan, learned counsel appearing for respondents 7 to 9, the nominated election committee members by the 2nd respondent, would submit that the members are all neutral persons and respected senior members of the bar. Their nomination cannot be questioned. They would be neutral in conducting the election without favouring anybody.

14. Mr.S.D. Manivasagam, the 6th respondent, who was nominated by a resolution dated 14.11.2018 as Election Officer passed by Annual General Meeting of Salem Bar Association appeared in person and would submit that there are 2431 members as per the membership applications maintained by the Salem Bar Association. After careful scrutiny and deleting dead, retired and migrated members, the Committee found 1269

members as qualified voters and subsequently, the names of a few members have been included and totally, 1540 members were declared as eligible voters for the election on 11.01.2019. Thereafter only, the impugned orders have been passed. He would submit that though the 2nd respondent heard him, erroneously passed the impugned orders.

15. Heard the parties and perused the records.

16. It is true that based on the complaint given by the 5th respondent, the impugned orders have been passed on the ground that there was bulk payment of subscription and that outside members are sought to be shown as voters and that there was violation of 'one bar one vote' principle. As far as 'one bar one vote' is concerned, it has become a rule as per the Certificate and Place of Practice (Verification) Rules, 2015. As per the aforesaid rules, every enrolled member of Bar Council of every State is obliged to submit a form and commit himself as to the State Bar Council he would like to cast his vote and as to which of the Bar Associations in which he would like to cast his vote. Hence, after the introduction of the aforesaid Rules, the bye-laws of all the Bar Associations and Advocates' Associations

are deemed to have been amended in tune with the aforesaid Rules. The Hon'ble Supreme Court in the judgment rendered in *Supreme Court Bar Association V. B.D.Kaushik reported in 2011 13 SCC 774*, in paragraph No. 32, held that 'one bar one vote' is a prescription, which is in furtherance of the right to form association and be able to manage the affairs of the association by those who regularly practise in the Courts of which the association is formed and of which the members are regular practitioners. Paragraph No. 32 of the above judgment is usefully extracted as follows:

"32. As noticed earlier, no person can be enrolled as an advocate on the roll of more than one State Bar Council. A citizen of India is entitled to cast his vote at an election of Legislative Assembly or an election of MP only in the constituency where his name appears as a voter in the voting list and he cannot claim right to vote at another place where he may be residing because of his occupation, service, etc. Thus "one-person-one-vote" is recognised statutorily since long. Viewed in the light of these facts, the concept of voting introduced by amendment of Rule 18 of the Rules and Regulations of SCBA cannot be regarded as illegal or unconstitutional."

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Therefore, 'one bar one vote' has become a statutory prescription and all the Bar Associations in India are bound by it.

17. With regard to inclusion of outstation members are concerned, it is submitted by the 6th respondent Mr.S.D. Manivasagam that after his nomination by virtue of resolution dated 14.11.2018, he verified the entire list and deleted dead, retired and migrated members and thereafter, prepared the list and the total number of members is 1540 as stated by him in paragraph No. 11 of the counter affidavit filed by him. In paragraph Nos. 8, 10 and 11, he has given the details as to how the list was very meticulously prepared. More over, he is a senior member of the bar having the experience of conducting three previous elections of the Association successfully. Therefore, the allegation made by the 5th respondent that the outsiders are sought to be included as members falls to the ground.

18. As far as the appointment of respondents 7 to 9 as Committee members to conduct the election is concerned, as rightly pointed out by Mr.R. Shanmugasundaram, learned counsel for the petitioner, it is evident from Page No.19 of petitioner's typed set that Mr.R. Srinivasan and Mr.K. Rajasekaran proposed and seconded the candidature of Mr.K. Raja (Enrolment No. 748/89) for the post of President in the election for the year

2019. The said two persons have been appointed as Committee members by the 2nd respondent to conduct the election. Once they proposed and seconded a candidate, it cannot be expected that the said two persons would act neutrally even though they are neutral persons. Once it is proved by documents that they proposed and seconded some candidates, in the opinion of this Court, they cannot act as members of the Committee appointed to conduct the election. Neutrality is the basic requirement to act as "Election Officer". Therefore, the Committee appointed by the 2nd respondent for conducting the election has to be set aside.

19. The 6th respondent, Mr.S.D. Manivasagam, who was appointed as the Election Officer by resolution dated 14.11.2018 passed in the General Body Meeting has done commendable work and he prepared the list of voters. Therefore, his nomination as Election Officer has to be sustained. However, he can act along with an Election Officer to be appointed by this Court. A neutral person needs to be appointed for conducting the election. Therefore, this Court appoints Mr.Venugopal, a Retired District Judge as Election Officer along with Mr.S.D.Manivasagam to conduct the election of

the office bearers to Salem Bar Association.

20. The main contention with regard to the prohibition regarding contesting in election more than once is concerned, as rightly pointed out, usually, the bye-laws of the association should have such a provision. The said prohibition should be brought by a resolution by General Body by two-thirds majority as per bye-law 35, which reads as follows:

“35. Rules shall not be amended except by resolutions of the General Body by two-thirds majority of the members present in the meeting specially convened for the purpose.”

No doubt, the resolution has to be approved by two-thirds majority in the General Body of the Association. However, this Court cannot lose sight of the fact that office bearers, once they get elected are continuously elected by hook or crook, by malpractice and having monopoly over the associations. Moreover, the associations cannot, as a matter of right, have Rules leaving it to be controlled by inexperienced lawyers or lawyers with criminal background or tainted background. The office bearers are effectively in touch with the Judicial Officers for smooth running of Courts and for sorting out any problems and if these disgruntled elements control

bar associations, definitely, it would affect the administration of justice. Office bearers with criminal background or inexperienced lawyers, invariably, call for frequent boycotts and they indulge in activities which may not be in the interest of justice delivery system.

21. This Court has got the power under Article 227 of the Constitution of India to oversee the functions of the subordinate judiciary.

Article 227 of the Constitution of India reads thus:

“227. Power of superintendence over all courts by the High Court

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor

(4) Nothing in this article shall be deemed to confer on a High Court

powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces”

This Court has got the power to regulate the conditions of practice. Article 227 is akin to Article 145(1)(a) of the Constitution of India which prescribes the powers of the Hon'ble Supreme Court to make rules as to the persons practising before the Court. Therefore, the Supreme Court and High Court may make rules and such rules are merely regulatory in nature and do not impose an absolute bar on the right to practice. When this Court has got the power to regulate the conditions of practice, it cannot be said that the High Court cannot regulate or prescribe qualifications for office bearers of the associations including imposing prohibition regarding contesting more than one time at a stretch. The Hon'ble Supreme Court while dealing with the conditions imposed regarding 'one bar one vote' to the members of Supreme Court Bar Association (SCBA) held in paragraph No.85 of the judgment rendered in ***B.D. Kaushik's case (cited supra)*** as follows:

“85. Moreover, this Court, has framed the Supreme Court Rules, 1966 in exercise of powers under Article 145(1)(a) of the Constitution regulating amongst other things advocates who are entitled to practise in this Court. Further, necessary directions/guidelines can always be issued when facilities and privileges are conferred on the

members of SCBA. Thus not only power to give necessary guidelines/directions is available under Articles 136, 142, 145(1)(a) of the Constitution but such power can also be exercised as “grantor” of the benefits and privileges which are enjoyed by the members of SCBA to restore its dignity. Having regard to the overall conditions prevailing in SCBA, this Court proposes to give appropriate directions for implementation of the amended rule which projects the principle of “One-Bar-One-Vote”.

22. The reasons for bringing in Certificate and Place of Practice (Verification) Rules, 2015 are given as follows:

“The Bar Council of India has also come to know that a number of fake (farzi) persons (without any Law Degree or enrolment certificate) are indulged in Legal practice and are cheating the Litigants, courts and other stake-holders; and neither the Bar Associations nor the concerned State Bar Councils have any control over such fake persons. Shockingly, it has come to the notice of the Council that at some places, the office-bearers of Bar Associations or some vote-seekers knowingly make such people members and voters of the Associations with a motive to get their votes in the elections of Bar Associations or Bar Councils. Similarly, many persons, after getting enrolled as Advocates in any State Bar Council, get involved in Property-Dealings, contract or switch-over to some other business, profession or job and have no more concern with the Legal profession. Such “ non-practicing Advocates” are sometimes being used by some of the office-bearers /candidates for elections of Bar Associations or Bar Councils (only for their votes). But, in fact, the

Council has realized that such practice is degrading the standard of Legal profession, and this mal-practice has to be stopped.

Few of the office-bearers/representatives of some of the Bar Associations had raised unnecessary objections and protests to these reformative steps. Such protests were/are only to serve their vested interests. Bar Council of India has to maintain the dignity and standard of Legal profession, we shall have to oust fake people from the Court-campus and we shall have to identify “non-practicing Advocates”, (who are involved in other job, business or profession). We are to ensure that such Advocates do not involve in deciding the fate of our Associations and the Bar Councils; And such Advocates are not allowed to get any benefit of welfare schemes or to practice Legal profession so long they are in any other business, job or profession.

It is due to these reasons, the Council has decided to make provisions for identification of such fake persons and non-practicing Advocates. And the Council has felt it necessary to discourage those Advocates who raise unnecessary protests with an intent to keep and protect the fake and/or non-practicing Advocates with an object to get their votes. Therefore, the Council has resolved to make suitable provisions in these Rules so that if any Advocate is found to be indulged in making deliberate effort to –

- (i) Protect fake people practicing legal profession illegally,*
- (ii) to create any hurdle in identification of “ non-practicing Advocates” and*
- (iii) create any objection in verification of the certificate of practice, credentials, place of Practice and details of Advocates, such Advocates*

would be debarred from contesting any election of Bar Association or Bar Council for a period of three years from the date of order to this effect.

Under these circumstances and for the abovementioned reasons, the Council has resolved to repeal the “ Bar Council of India Certificate of Practice and Renewal Rules, 2014” and has made and passed the new “ Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015”, and has decided to implement it.”

The aforesaid objects would show the disturbing state of affairs and fake advocates, which makes it very imperative to prescribe qualifications for a member of an association to contest the election which shall be minimum for any association with liberty to prescribe higher standard or qualification including maximum number of times to contest the election continuously. Section 34(1) of the Advocates' Act 1961 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.”*

Under Section 34(1), the High Court is empowered to frame Rules laying down the conditions subject to which an advocate will be entitled to practice in the High Court and the Courts subordinate thereto. A Constitution Bench

of the Hon'ble Supreme Court in ***O.N. Mohindroo V. Bar Council of Delhi and others reported in 1968 (2) SCR 709 :: AIR 1968 SC 888*** explained about the object of Advocates' Act as follows:

"9. *The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of professional conduct and etiquette, and the power to punish those who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Sections 35, 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy Section 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrolment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all courts including the Supreme Court. As aforesaid, the Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore the Act must be held to*

fall within Entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to legislate in relation to legal and other professions in Entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under Entries 77 and 78 of List I and partly under Entry 26 of List III."

23. In the matter of allotment of chambers to practising advocates, the Hon'ble Supreme Court laid down the rules in ***Vinay Balachandra Joshi V. Registrar General, Supreme Court of India, reported in 1998 7 SCC 461*** and ***Gopal Jha V. The Hon'ble Supreme Court of India reported in 2019 3 SCC 161***. When the Hon'ble Supreme Court even regulated the allotment of chambers, this Court has got powers to issue directions to regulate the formation, election and functioning of Bar Associations as they are sometimes directionless by electing non-practising advocates, advocates with tainted background and inexperienced lawyers, which would ultimately affect the justice delivery system.

24. Certain powers have been vested with the State Bar Councils and Bar Council of India to give directions to the Bar Associations as an association formed by lawyers has no statutory recognition except in so far as Section 16 of Advocates Welfare Act, 2001 with corresponding duties

provided under the said Act.

25. It is true that the formation of association is an internal matter and Courts may not have any power to meddle with the same, but the experience of this Court in the past would reveal that the administration of justice is affected because of election of non-practising advocates, advocates with tainted background and inexperienced lawyers, who, invariably, call for boycotts affecting justice delivery system and eroding the faith of general public in Courts. Moreover, this Court gets many complaints from subordinate judicial officers about threat, blackmailing attitude of the office bearers of Bar Associations for judicial orders, as disgruntled elements are continuously getting elected. Besides, nowadays, numerous Bar Associations are formed on communal and political basis. These are all the realities in the Lower Courts and this Court cannot lose sight of the same. Hence, necessarily, this Court has to give directions even regarding the functioning of Bar Associations. The Hon'ble Apex Court in ***B.D. Kaushik's case (cited supra)***, in paragraph No.28, observed as follows:

"28. There is no manner of doubt that court-annexed Bar Associations constitute a separate class different from other lawyers' associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognised by the court concerned. Court-annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. The court-annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practising in the court, parking place and canteen besides several other amenities. In the functions organised by the court-annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration."

26. In view of the above only, this Court has to intervene and give direction even in the internal matter of the Court annexed advocate/bar associations restricting the number of times an office bearer can contest. If a

member of a Bar/Advocate Association is elected, interest of justice requires that there should be a provision prohibiting him from contesting for the second time so that other persons can have an opportunity to contest the elections. It would also prevent monopoly of the Bar as elected members, they get the advantage of getting elected easily, who sometimes indulge in corrupt practices. As a healthy practice, Madras Bar Association as well as Madras High Court Advocates' Association follow the procedure of elected member not contesting for the second time and making it as voluntary prohibition. When the two big Bar Associations attached to the principal Bench of this Court follow the aforesaid healthy norm, there may not be any reason for not following the said norm in the Lower Courts also. It is hereby declared that all the Bar/Advocate associations in the State shall have rule that the elected office bearers cannot contest next election continuously and they can contest in the alternate elections. To put it in other words, there shall be a prohibition for the elected office bearers of the Bar/Advocate Associations in the State to contest in the following/next election and they can contest in the alternate elections only.

27. Mr.J.Pothiraj, learned counsel appearing on behalf of the Bar

Council of Tamil Nadu relied upon the order passed by the Special Committee of the Bar Council of Tamil Nadu and Puducherry dated 03.06.2019 in T.N.E.C.R.No.12 of 2019 in ***M.Arumugam and others Vs. President/Secretary, G.T.Bar Association and another*** to contend that the elected office bearers of the association cannot contest continuously for office bearers post in the association. Para 64 (iv) of the order dated 03.06.2019 is extracted as follows:

"iv)The election for the Association has to be necessarily conducted for every 2 years at least or one year and by any reason whatsoever the election cannot be postponed for more than 2 years and the byelaws of all the Associations have to be suitably amended in case they provide the tenure of 3 years or 5 years. Like that the elected members once elected for a tenure can compete in the election for one more tenure continuously and thereafter for the third time, 4th time and 5th time they cannot contest in the election to avoid claiming monopoly right of ruling over the Association. However, they can again compete for the 6th time and like that the cycle should continue to enable other eligible candidates to get a chance to administer the Association. This should be uniformly followed by all the Associations for which election is in question before us or election is not yet conducted."

From the above it is clear that the Special Committee permitted the office bearers to contest the election for two consecutive terms and thereafter, they are prohibited from contesting the elections for the next three terms, to

avoid monopoly of the elected office bearers. However, this Court is of the opinion that permitting the elected office bearers for continuous two terms is unreasonable and similarly prohibiting the elected members from contesting election from subsequent third to fifth terms is also unreasonable. As followed by Advocate Associations, Madras High Court Advocate Association and Madras Bar Association, two very old Associations of India, it is appropriate to permit the elected office bearers to contest the election in the alternate elections, so that the democratic character would be given to the election process, thereby, avoiding monopoly by the elected office bearers being elected continuously. In view of the same, order dated 03.06.2019 is modified by permitting the elected office bearers of the advocates association to contest election in the alternate elections.

28. In this regard the judgment of the Hon'ble Supreme Court in the case of *Bhandara District Central Cooperative Bank Limited vs State of Maharashtra and another* reported in *1992 Supp (3) SCC 259* can be referred. In that case, the questions dealt for consideration was as to whether an amendment brought in the Maharashtra Cooperative Societies Act 1960 by which a provision has been introduced to restrict the period for which a

person is either elected or appointed under the Act. The Hon'ble Supreme Court held that a Cooperative Society is not meant to be run as a close preserve of an individual or a group of persons and the amendment is to restrict the group of persons always found to be holding the key position in several important cooperative institutions for long period preventing an emergence of new leadership. The Hon'ble Supreme Court further observed that the said provision is necessary to give a more democratic character to the co-operative institutions. Paragraph 5 of the said judgment is extracted as follows:

"5. We have considered the argument and examined the provisions of the Act placed before us by the learned Counsel for the parties. It appears that there is clear basis for selecting the category of persons to be referred to by the expression "designated officer" for the purposes of Sections 73A, 73C, 73D and 73E, and the policy in this regard is perfectly reasonable, having regard to the object of the amendment. The impugned provisions restrict the period for which a person either elected or appointed (under the Act, the rules or the by-laws, who is entitled to give directions in relation to business of a society, can remain in office. The object of the amendment is clearly discernible as preventing a person or a group of persons from monopolising the affairs of a society by exercising control thereon indefinitely for a long period. A co-operative society is not meant to be run as a close preserve of an individual or a group of persons. "co-operative" has been understood as a form of organisation where persons

voluntarily associate together on a basis of equality for the promotion of their economic interests. The emphasis is on 'co-operation'. It is, therefore, desirable to have the active participation of as many members as may be possible. The Statement of Objects and Reasons for the 1969 Amendment has mentioned that the object of the Act was not being fully achieved as a group of persons were found holding the key positions in several important co-operative institutions simultaneously and for long periods, with a result that new leadership was not being built up to the desired extent. To check this unhealthy tendency and to give a more democratic character to the co-operative institutions, it was found necessary to prescribe the limitations in the statute itself by amendment. When after watching the effect of the earlier amendments, the Gujarat legislature found that the goal was not fully achieved, and a further amendment was necessary, the impugned provisions were inserted in the Act. All this has done for realising the objective set out by the Act and is clearly in the public interest."

It is clear from the aforesaid judgment that the Hon'ble Supreme Court was conscious of giving democratic character to the cooperative institutions and upheld the restriction regarding the period for which the person could get elected. The same principle could also be extended to elections to the Court approved/affiliated, Advocate/Bar Associations, so as to have more democratic character to association and also prevent monopoly of only a few people.

29. The Hon'ble Supreme Court while deciding about the

amendment brought in the by-laws of SCBA, to ensure one bar one vote concerning the Supreme Court Bar Association in the case of ***Supreme Court Bar Association and others Vs. B.D.Kaushik*** reported in **2011 (13) scc 774** recorded the argument of Mr.K.K.Venugopal, former President of SCBA in paragraph 66 as follows:

"66. Informing the Court the learned counsel mentioned that historically, with the advocates regularly practising in the Supreme Court being inducted as members of SCBA, the facilities made available by this Court to the members were sufficient for their use, but certain unhealthy practices and vices started creeping into the system of elections to the various posts/offices of SCBA by reason of the fact that the office of the President of SCBA carried a vast prestige and status, not merely among lawyers but also among governments and the political class. It was also stated by the learned counsel that being an office-bearer or a member of the Executive Committee of SCBA also carried great importance and prestige. According to the learned counsel, the main vice that crept into the system, for the last decade or so was that aspiring office-bearers started buying the application forms for membership, in bulk, and paying the membership fee for lawyers from the various places like Meerut, Rohtak, Saharanpur, Ghaziabad and even as far away a place as Chandigarh."

From the above it is clear that Mr.K.K.Venugopal, senior counsel, who is the present Attorney General of India consciously argued that by getting

elected as the office bearers of the Supreme Court Bar Association, the elected members become very familiar with the Government and the political class. It is recorded that posts/offices of/in bar associations carry vast prestige and status in the society. The said argument is also equally applicable to all the Bar Associations in the Country, and that is the reason why the contesting advocates are spending lakhs and lakhs, sometimes in crores to get elected as President and other office bearers of Advocate/Bar Associations and Bar Council. It is not only a prestigious status, most office bearers use their positions either to attract briefs or to do 'Katta Panchayats'. Many of the office bearers are stated to be threatening and coercing judicial officers for judicial orders. It is being said, many of the elected office bearers of the associations are indulging in illegal acts of land grabbing with connivance of some of the police officials. It is also stated that many litigants engage the elected bar leaders rather than advocates with knowledge of law as they think that they are capable of securing orders, though it is a sorry state of affairs, it has become a reality. Many elected members are having tainted background and many of them are non-practising advocates without appearing before the Courts and conducting

the cases; what is required is only money and muscle power and caste support. Sometimes political parties also have their role in getting their party cadres elected as bar leaders, so that they could be used during political protests, agitation and processions. This kind of malpractices and wrong methods of elections should be prevented and prohibited; otherwise, the Courts/Judges will become puppets in the hands of this kind of unruly office bearers of the associations.

30. It is common knowledge that during elections there will be heavy flow of money and liquor. Shamelessly some of the members of the so called noble profession sell themselves for liquor and money, paving the way for election of non-practising advocates with tainted backgrounds to the association/Bar Councils. Even though orders are being passed by this Court regularly to control these kind of malpractices, sometimes orders of this Court could not be enforced. In the last Bar Council election held in 2018, taking note of the heavy flow of cash for voters, the learned Advocate General, Tamil Nadu and Ex-officio chairman of Bar Council of Tamil Nadu gave the details of corrupt practices being adopted, which reads as follows:

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“I have received a number of reports from advocates all over the state that:

- 1. The going rate for a single vote in the ensuing council election is Rs.30,000*
- 2. some of the candidates who are proposing to stand for election are actually indulging in bulk purchase of votes i.e. they are giving money to the association leaders in the smaller association of 100-500 members with a promise from the leaders that all the votes will be cast in favour of a candidate*
- 3. One candidate who is a former council member is organising a holiday to Pattaya in Thailand for a number of association leaders*
- 4. One candidate who is again a former council member is planning to distribute about 600 motorcycles*
- 5. some of the former council members who intend to stand for election have hired beach houses on the East Coast Road and are throwing parties where liquor is served, in order to induce voters to vote for them*
- 6. After the election is over and 25 members are elected, for the election to the post of chairman and BCI representative, the going rate is a Toyota Innova car.”*

From the above one could understand the power and status of the position in Advocate Association/Bar Association with the Judges, Political classes, Government especially police. In the above background only the present case also has to be dealt with.

31. Therefore, this Court directs the Committee constituted by this

Court namely, Mr.Venugopal, retired District Judge and Mr.S.D.Manivasagam to ensure that elected office bearers cannot contest for the second time. However, it is made clear that there is no prohibition for the said office bearers to contest in the alternate election. The provision to contest in the alternate election will be a healthy norm, which will enable all the members to contest the election and get elected without providing any room for monopoly. Therefore, the order by which the Special Committee of the Bar Council of Tamil Nadu and Puducherry barring the elected members from contesting for further three terms is modified as one term. In other words, the elected office bearers of the Associations cannot contest continuously for the next election and they can contest in the alternate election.

32. Since an allegation has been made against the deceased/3rd respondent that he used to print his photograph on the calendars issued by the Bar Association and the names in the vakalath along with their position in the association, this Court feels that the attempt of some of the office bearers to print their photographs in the calendars and their position in the association in the vakalath is only to influence the Judges and it should be

prohibited. It is appropriate to direct the Bar Council to direct the Advocates/Bar Associations not to print the photographs of the office bearers in the calendars as well as their names along with their position in the association in the vakalath.

33. In fine, the writ petition is disposed of in the following manner:

(i) The Election Committee consisting of R7 to R9 appointed by the 2nd respondent by the impugned orders is set aside.

(ii) One bar one vote shall be the norm as per the Rules of Practice and as per Judgment of the Hon'ble Supreme Court, in the case of ***Supreme Court Bar Association V. B.D.Kaushik*** reported in ***2011 13 SCC 774***.

(iii) The voters list as prepared by Mr.S.D. Manivasagam, the 6th respondent shall be updated as on 31.12.2020 and the updated voterlist shall be the voterlist for the ensuing elections.

(iv) Mr.Venugopal, Retired District Judge is appointed as Election Officer along with 6th respondent Mr.S.D.Manivasagam to be assisted by

one or two advocates as per the discretion of the Election Officers.

(v) Order dated 03.06.2019 passed by the Special Committee, Bar Council of Tamil Nadu and Puducherry in T.N.E.C.R.No.12 of 2019 in the case of *M.Arumugam and others Vs. President/Secretary, G.T.Bar Association and another* is modified by permitting the elected office bearers of Bar/Advocate Associations to contest election in the alternate elections.

(vi) The Elected candidates of Bar Associations/Advocates Associations shall not be allowed to contest for the second time continuously and there is no prohibition to contest in the alternate election, which shall be the norm for all elections to advocates/Bar associations in the State.

(vii) The Bar Council of Tamil Nadu and Puducherry is directed to direct the Advocates/Bar Associations of the State that elected candidate shall not be allowed to contest for the second time continuously and there is no prohibition to contest in the alternate election.

(viii) The Bar Council of Tamil Nadu and Puducherry shall direct the

Advocates/Bar Associations not to print the photographs of the elected office bearers in the calenders as well as their names along with their position in the associations in the vakkalaths.

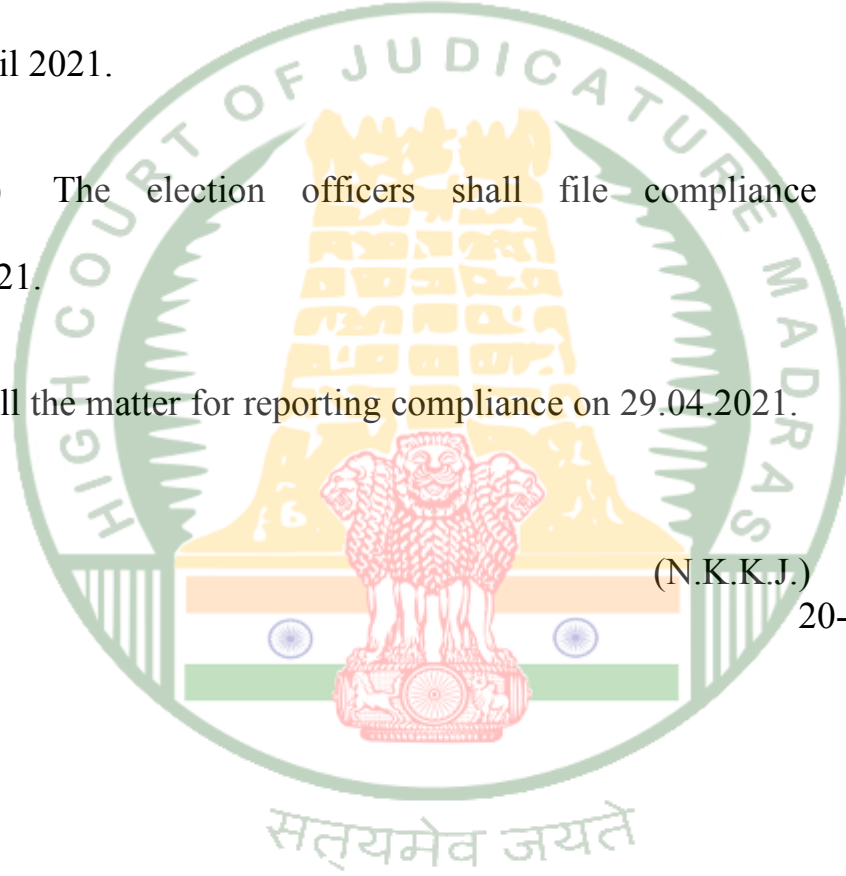
(ix) The election shall be conducted and concluded on or before 26th April 2021.

(x) The election officers shall file compliance report on 29.04.2021.

Call the matter for reporting compliance on 29.04.2021.

(N.K.K.J.) (R.P.A.J.)
20-01-2021

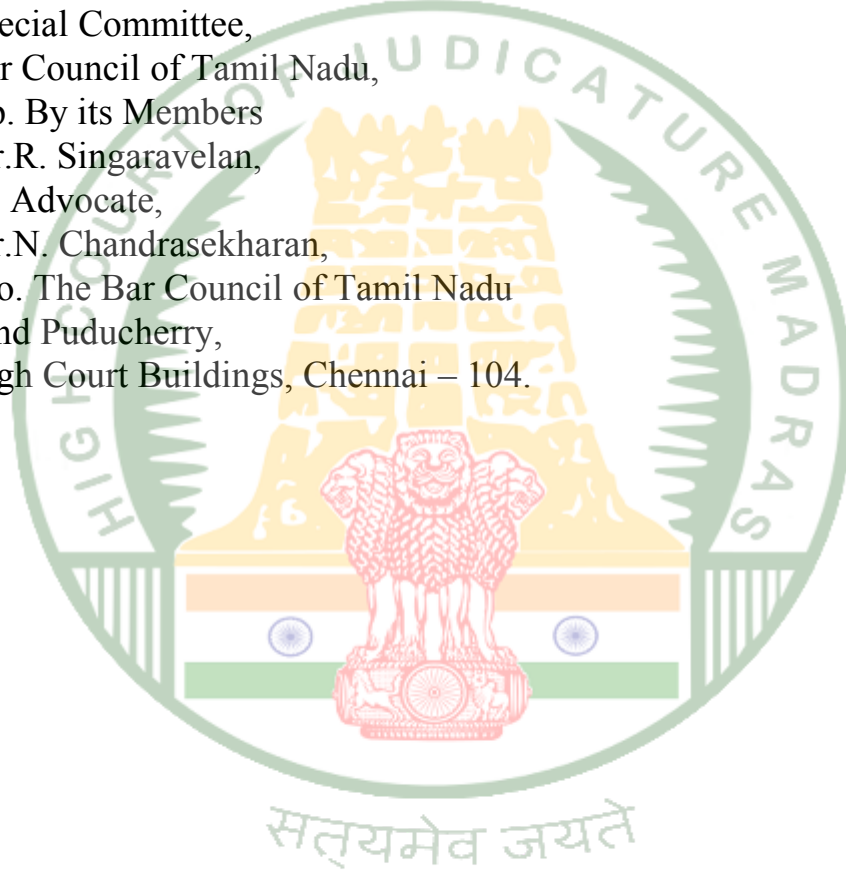
nv



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To

1. Secretary,
Bar Council of Tamil Nadu and
Puducherry,
High Court Buildings, Chennai – 104.
2. Special Committee,
Bar Council of Tamil Nadu,
rep. By its Members
Mr.R. Singaravelan,
Sr. Advocate,
Mr.N. Chandrasekharan,
O/o. The Bar Council of Tamil Nadu
and Puducherry,
High Court Buildings, Chennai – 104.

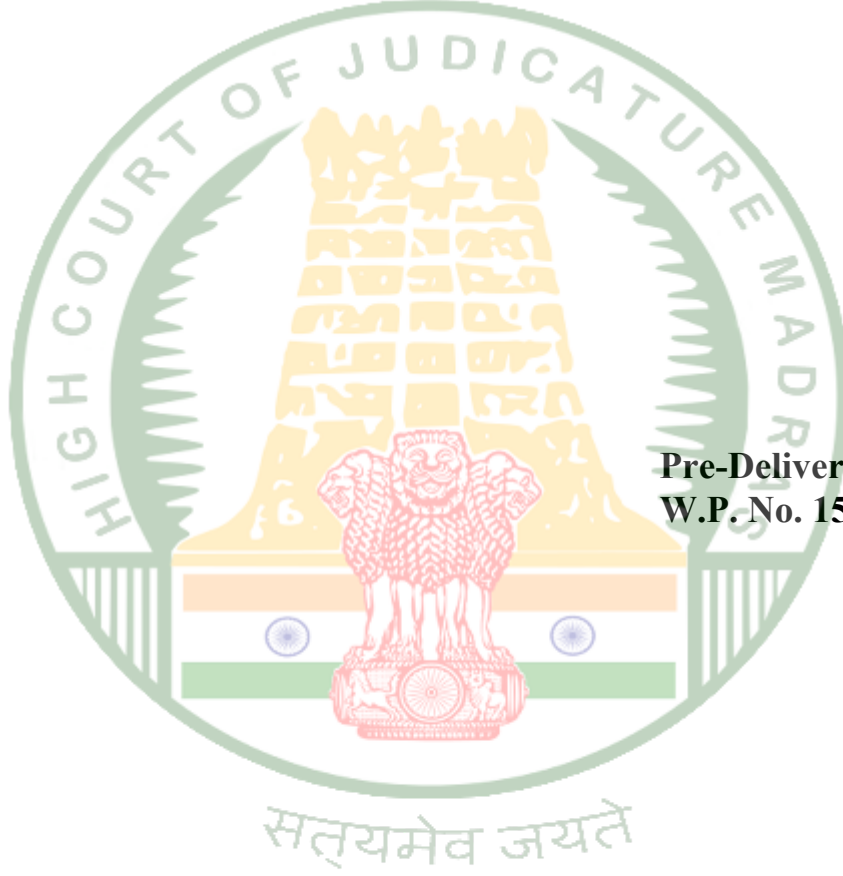


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W.P.No. 1571 of 2019

N. KIRUBAKARAN,J.
AND
R. PONGIAPPAN,J.

nv



**Pre-Delivery Order in
W.P. No. 1571 of 2019**

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20-01-2021

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