

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.05.2020

PRONOUNCED ON: 16.06.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No 7419 of 2020

and WMP No.8886 of 2020

Dr.A.E.Chelliah

... Petitioner

Versus

1.The Chairman and Members of the Bar Council of
Thamizh Naadu and Puducherry,
rep.by its Secretary,
High Court Complex, Chennai – 600 104.

2.The State of Thamizh Naadu
Rep. by its Chief Secretary to Govt.
Fort St. George, Chennai – 600 009.

3. The Bar Council of India,
21 – Rouse Avenue,
Institutional Area,
New Delhi – 110 002.

(R3 impleaded suo motu vide order
dated 16.06.2020)

.. Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus to direct the respondents to release the sum of Rupees Fifty Thousand to an Advocate and Rupees Twenty Five Thousand to the Registered Advocate Clerks in the State of Thamizh Naadu.

For Petitioner : Dr.A.E.Chelliah, Party-in-person

For R1: Mr.S.R.Rajagopal, Additional Advocate General Assisted
by Mr.V.Jayaprakash Narayanan

For R2 : Mr.C.K.Chandrasekaran

For R3 : Mr.S.R.Raghunathan

ORDER

[Order of the Court was made by Dr.ANITA SUMANTH,J]

This Writ Petition, styled as a Public Interest Litigation (PIL), and moved by a Senior Advocate, raises an important issue in general, and one that assumes par-

ticular importance in a situation such as the present pandemic where self-employed professionals are hard-pressed for a source of income/livelihood.

2. The petitioner seeks a direction to the respondents, R1/Bar Council of Tamil Nadu and Puducherry (BCTNP) and R2/State of Tamil Nadu (State) to pay Advocates and registered Advocate Clerks a sum of Rs.50,000/- and Rs.25,000/- respectively, as an ad interim measure. The premise upon which this prayer is made is that the aforesaid amounts, in any event, constitute only a portion of the amounts earmarked to their own benefit from out of the welfare funds held by R1 in trust, to be paid over to the advocates and advocate-clerks in certain enumerated circumstances.

3. The Advocates Act, 1961 was enacted to consolidate the law relating to legal practitioners, and provided for the constitution of Bar Councils, both at the all India as well as at the State levels, under Section 4 and Section 3 thereof, respectively.

4. Pursuant thereto, the Bar Council of India (BCI) as well as State bar Councils stood constituted and their respective Rules and Regulations framed. The

Rules of the BCI relevant for the purposes of this PIL are Rules 40, 41, 44A and

44B and read as follows:

40. Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 90/- every third year commencing from 1st April, 1993 along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before 1st April, 1993 or such extended time as notified by the Bar Council of India or the concerned State Bar Council:

PROVIDED FURTHER however that an Advocate shall be at liberty to pay in lieu of the payment of Rs. 90/- every three years a consolidated amount of Rs. 300/-. This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council and interest to be used for the purpose of this rule. However, payment made by the concerned Advocate before this consolidated payment shall be exclusive of it and no credit shall be given for the payment, but those Advocates who have paid consolidated amount of Rs. 200/- only as a consolidated amount of Rs. 100/- will be required to pay.

Explanation 1: Statement of particulars as required by rule 40 in the form set out shall require to be submitted only once in three years.

Explanation 2: All Advocates who are in actual practice and are not drawing salary of not in full time service and not drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3: This rule will be effective from 1-4-1994 and for period prior to this, Advocates will continue to be covered by this Rule.

41.(1) All the sums so collected by the State Bar Council in accordance with Rule 40 shall be credited in a separate fund known as "Bar Council of India Advocates welfare Fund for the State" and shall be deposited in the bank as provided hereunder.

(2) The Bar Council of India Advocates Welfare Fund Committee for the State shall remit 20% of the total amount collected and credited to its account, to the Bar Council of India by the end of every month which shall be credited by the Bar Council of India and the Bar Council of India shall deposit the said amount in a separate fund to be known as "BAR COUNCIL OF INDIA ADVOCATES

WELFARE FUND". This fund shall be managed by the Welfare Committee of the Bar Council of India in the manner prescribed from time to time by the Bar Council of India for the Welfare of the Advocates.

(3) The rest 80% of the total sum so collected by the Bar Council of India Advocates Welfare Fund Committee for the State under Rule 41(1) shall be utilised for the welfare of Advocates in respect of Welfare Schemes sponsored by respective State Bar Councils and this fund shall be administered by the Advocates Welfare Committee for the State which shall submit its report annually to the Bar Council of India.

(4) In case of transfer of an Advocate from one State Bar Council to other State Bar Council, 80% of the total sum collected so far in respect of that Advocate by the Bar Council of India Advocates Welfare Committee for the State under Rule 41(1) where the said Advocate was originally enrolled, would get transferred to the Advocates Welfare Fund Committee of the Bar Council of India for the State to which the said Advocate has got himself transferred.

44A. (1) There shall be a Bar Council of India Advocates Welfare Committee, consisting of five members elected from amongst the members of the Council. The term of the members of the Committee shall be co-extensive with their term in the Bar Council of India.

(2)(i) Every State Council shall have an Advocate Welfare Committee known as Bar Council of India Advocates Welfare Committee for the State.

(ii) The Committee shall consist of member Bar Council of India from the State concerned who shall be the Ex-Officio Chairman of the Committee and two members elected from amongst the members.

(iii) The Secretary of the State Bar Council concerned will act as Ex-Officio Secretary of the Committee.

(iv) The term of the member, Bar Council of India in the Committee shall be co-extensive with his term in the Bar Council of India.

(v) The term of the members elected from the State Bar Council shall be two years.

(vi) Two members of the Committee will form a quorum of any meeting of the Committee.

(3) Every State Bar Council shall open an account in the name of the Bar Council of India Welfare Committee for the State, in any Nationalised Bank.

(4) No amount shall be withdrawn from the Bank unless that cheque is signed by the Chairman of the Welfare Committee and its Secretary.

(5)The State Bar Council shall implement Welfare Schemes approved by the Bar Council of India through Advocates Welfare Committee as constituted under sub-clause (2)(i). The State Bar Councils may suggest suitable modifications in the Welfare Schemes of suggest more schemes, but such modification or such suggested schemes shall have effect only after approval by the Bar Council of India.

(6)The State Bar Council shall maintain separate account in respect of the Advocate Welfare Fund which shall be audited annually along with other accounts of the State Bar Council and send the same along with Auditors Report to the Bar Council of India:

PROVIDED that the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent to appoint its own staff in addition to the staff of the Bar Council of the State entrusted with duty to maintain the account of the Fund if their funds are adequate to make such appointment. The salary and other conditions of the said staff be determined by the Bar Council of India Advocates Welfare Fund Committee for the State:

PROVIDED FURTHER that Chairman of the Bar Council of India Advocates Welfare Fund Committee for the State shall be competent to make temporary appointment for a period not exceeding six months in one transaction if the situation so requires subject to availability of fund in the said Committee for making such appointment.

44B.The Bar Council of India shall utilise the funds received under Rule 41(2) in accordance with the schemes which may be framed from time to time.

5. In summary, the BCI Regulations provide for the collection of an amount from a member of the State Bar Council, and the deployment/crediting of the same in an Advocates welfare fund to be created by the Bar Council of India qua a specific State. Out of the amount so credited, 20% shall stand transferred to the account of the Bar Council of India every month, to form part of the corpus of the

Bar Council of India Advocates Welfare Fund. Rule 41(3) provides that the remaining 80% will be retained by the State Bar Council of India Advocates Welfare Fund, to be utilized for the welfare of Advocates, being members of the respective State Bar Councils. This fund is to be administered by the Advocates Welfare Committee for the respective State, which is to submit annual returns for due monitoring by the BCI. Rule 44A provides for the constitution of the BCI Advocates Welfare Committee as well as an Advocates Welfare Committee at the State level and the constituents thereof.

6. In continuation thereof, the Tamil Nadu Advocates' Welfare Fund Act, 1987 (in short 'TNAWFA') has been enacted that specifically provides for the constitution of a welfare fund for the benefit of Advocates on cessation of practice and matters connected therewith or incidental thereto.

7. Section 2 of the TNAWFA defines a 'fund' as one constituted under Section 3 of the said Act, as relating to those Advocates whose names have been entered in the roll of Advocates prepared and maintained by the BCTNP and who

are members of a Bar/Advocates Association, that is recognized and registered by the Bar Council under Section 13 of the TNAWFA.

8. The Advocates' Welfare Fund is provided for under Section 3 and Section 3(2) provides for the crediting of various amounts under sub-sections (a) to (j) to form the corpus of the fund. The amounts are as follows:

3. Advocates Welfare Fund. - (1)

(2) There shall be credited to the Fund-

- (a) all amounts paid by the Bar Council under section 12;*
- (b) any other contribution made by the Bar Council;*
- (c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association, any Advocates Association/ or other association or institution, or any advocate or other person;*
- (d) any grant made by the Government to the Fund;*
- (e) any sum borrowed under section 10;*
- (f) all sums collected under section 15;*
- (g) all sums received from the Life Insurance Corporation of India on the death of an advocate under a Group Insurance Policy;*
- (h) any profit or dividend or refund received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;*
- (i) any interest or dividend or other return on any investment made of any part of the Fund; and*
- (j) all sums collected by way of sale of stamps under section 22.*

9. Section 4 deals with establishment of a Trustee Committee by name, the Tamil Nadu Advocates Welfare Fund Trustee Committee which consists of the Advocate General of the State as Ex-Officio chairman; the Secretary to the Government (Law Department); the Secretary to the Government (Home Department), both Ex-Officio members; the Government Pleader or the Public Prosecutor, as nominated by the Government; three members of the Bar Council nominated by it for a period of three years and the Secretary of the Bar Council who shall also act as a Secretary of the Trustee Committee, Ex-Officio.

10. The welfare fund constituted under Section 3 vests in the Trustee Committee, who shall apply and administer the same in the manner set out thereunder. In addition to the sources set out as above, Section 12 also provides for the transfer of an amount equal to 20% of the enrollment fee realized by the Bar Council to the fund annually.

11. Section 15 provides for an Application that may be filed by every Advocate practicing in any Court in the State concurrently being a Member of the Bar/Advocates' Association, to the Trustee Committee for admission as a Member

of the fund. Section 16 provides for the payment of sums to the members enrolled in the welfare fund/their families in certain enumerated circumstances, such as, i) cessation of practice, ii) cessation of practice as a result of permanent physical or mental disability; iii) upon completion of 25 years of practice and on completion of 5 years as a Member of the Fund, an enrolled Member, on cessation of practice, is provided for a lump sum payment and iv) demise of a Member.

12. The amounts to be paid in the aforesaid enumerated circumstances are set out in the Schedule to the TNAWFA, which reads as follows:

[Schedule]

[See Sections 9(2)(e), 16 and 28]

	<i>(Rs.)</i>
<i>25 years and above as a member of the Fund</i>	<i>1,00,000</i>
<i>24 years as a member of the Fund</i>	<i>96,000</i>
<i>23 years as a member of the Fund</i>	<i>92,000</i>
<i>22 years as a member of the Fund</i>	<i>88,000</i>
<i>21 years as a member of the Fund</i>	<i>84,000</i>
<i>20 years as a member of the Fund</i>	<i>80,000</i>
<i>19 years as a member of the Fund</i>	<i>76,000</i>
<i>18 years as a member of the Fund</i>	<i>72,000</i>
<i>17 years as a member of the Fund</i>	<i>68,000</i>

<i>16 years as a member of the Fund</i>	<i>64,000</i>
<i>15 years as a member of the Fund</i>	<i>60,000</i>
<i>14 years as a member of the Fund</i>	<i>56,000</i>
<i>13 years as a member of the Fund</i>	<i>52,000</i>
<i>12 years as a member of the Fund</i>	<i>48,000</i>
<i>11 years as a member of the Fund</i>	<i>44,000</i>
<i>10 years as a member of the Fund</i>	<i>40,000</i>
<i>9 years as a member of the Fund</i>	<i>36,000</i>
<i>8 years as a member of the Fund</i>	<i>32,000</i>
<i>7 years as a member of the Fund</i>	<i>28,000</i>
<i>6 years as a member of the Fund</i>	<i>24,000</i>
<i>5 years as a member of the Fund</i>	<i>20,000</i>
<i>4 years as a member of the Fund</i>	<i>16,000</i>
<i>3 years as a member of the Fund</i>	<i>12,000</i>
<i>2 years as a member of the Fund</i>	<i>8,000</i>
<i>1 year as a member of the Fund</i>	<i>4,000</i>

13. Section 22 provides for the printing and distribution of Welfare Fund

Stamps, each of the value of Rs.10/- to be inscribed 'Tamil Nadu Advocates'

Welfare Fund Stamp' in a stipulated size, design and colour. Section 23 mandates

that every vakalatnama filed before any Court/Tribunal/other Authority be affixed

with stamps of the value of Rs.30/- in addition to Court-fee stamps, if any, in order to render it valid. Section 28 provides for the power to amend the schedule setting out the rates at which payment is to be made to the Members in the enumerated circumstances. This then, is the Scheme of the State Welfare Fund Act.

14. Separately and similarly, the Tamil Nadu Advocates' Clerks Welfare Fund Rules, 2000 (TNACWFA) provides for the constitution of a fund for all Advocate Clerks in the State of Tamil Nadu and provides in Section 3 for the crediting of seven (7) categories of amounts to the fund for formation of a corpus, as follows:

3. **Advocates' Clerks Welfare Fund.**- (1) *The Government shall, by notification, constitute a Fund to be called the Tamil Nadu Advocates' Clerks Welfare Fund.*
- (2) *There shall be credited to the Fund,-*
- (a) *all amounts collected by way of sale of stamps under section 12;*
 - (b) *any voluntary donation or contribution made to the Fund by the Bar Council, any Bar Association, any other Association or Institution, any Advocate or any other person;*
 - (c) *any sum borrowed under section 10;*
 - (d) *all sums received from the Life Insurance Corporation of India on the death of a member of the Fund under a Group Insurance Policy;*
 - (e) *any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;*
 - (f) *any interest or dividend or other return on any investment made of any part of the Fund;*
- and*
- (g) *all sums collected under section 15.*

15. A status report has been filed by R1 stating that BCTNP is not blind to the problems faced by the Member Advocates and has been undertaking various measures for provision of financial assistance to those Advocates in need. A request appears to have been made by R1 to the Chief Ministers of Tamil Nadu and Puduchery for provision of financial assistance. Contributions were also sought from Senior Advocates and other Members of the Bar for onward transmission to Advocates in need and a specific relief fund account opened in the High Court Branch of the Indian Bank.

16. Applications were invited by R1 from Advocates who were in need of financial assistance stipulating conditions upon satisfaction of which such assistance would be extended. An android mobile application was created for the same purpose. As on 20.04.2020 BCTNP states that it has received 16,825 applications, 15,970 through the mobile application and the remaining through post. All the applications are stated to be under scrutiny.

17. As on 23.04.2020 the total contribution received including the balance available in the welfare fund is stated to be an amount of Rs.1,23,65,113/-. The

total credit available in the BCTN Advocates Relief Fund is stated to be a sum of Rs.5.00 crores. As at present, the membership of the BCTNP is 65,000 strong. It had received 16,000 applications via the Android Mobile App and 1059 applications physically, of which 12,215 were found eligible. The request of the BCTNP to the State Government was fruitful, pursuant to which, an initial grant was received, out of which, a sum of Rs.4,000/- each is said to have been disbursed to 12,000 Advocates on 18.05.2020. Response is awaited from the State Government to the request of BCTNP for additional funds. According to the learned counsels appearing for the respondents, this is the best that can be done at this juncture. Further measures are yet under advisement and consideration.

18. According to R1 the prayer of the petitioner is liable to be granted only if a specific amendment is brought to the Rules providing for the disbursement of the funds as an interim measure. As on date, the Rules stipulate specific circumstances and exigencies upon the occurrence of which only would payment be made to the person concerned. There is no provision for interim payment.

19. Sadly, the BCTNP is right. Though there are several situations enumerated for remittances to be effected, circumstances such as the present, warranting interim payments at the discretion of the Trustees has simply not been envisaged and thus not provided for. However, BCI regulation 41(3) permits 80% of the total sum collected by the Bar Council of India Advocates Welfare Fund Committee for the State to be utilised for the welfare of Advocates in respect of Welfare Schemes sponsored by respective State Bar Councils. Thus, though a specific and suitable amendment/provision must be made to the State Rules providing for the mechanism for payment, the BCI Regulations have envisaged a situation where the State can formulate and sponsor a welfare scheme for Advocates and utilize the amounts collected, after seeking and obtaining concurrence of the BCI in that regard.

20. Regulation 44A(6) also provides for the State Bar Council to implement such a scheme in tandem with the BCI and subject to mandatory monitoring by the BCI. The absence of a specific and enabling Rule in the State regulations, though an immediate barrier, can and, in our recommendation, must, be inserted by way of

an amendment at the earliest, to provide for interim pay-outs to needy advocates in these dark and difficult days. We are thus, unfortunately, not in a position to accede to the prayer of the petitioner in this regard straight away but issue a direction to the respondents to consider our recommendation as aforesaid in the proper spirit and take positive and necessary action in that regard, at the earliest.

21. An identical position has been taken note of by the Allahabad High Court suo motu *In Re-Assistance to the needy Advocates and Registered Advocates Clerks V. State of U.P.*(PIL No.569 of 2020 dated 14.5.2020). At the hearing on 20.04.2020, the Division Bench of the Allahabad High Court suggested that the Trustees Committee under the Uttar Pradesh Advocates' Welfare Fund Act, 1974 constitute a welfare fund from which remittances may be made to the needy Advocates and the following directions were issued:

1. The Trustees Committee constituted under the Uttar Pradesh Advocates Welfare Fund Act, 1974 shall meet at earliest to have a scheme to provide assistance to the needy Advocates, who are deleteriously affected due to COVID-19 lockdown. After having the scheme, the Trustees Committee shall also ensure release of fund to all the court attached recognized Bar Associations in the State of Uttar Pradesh with specific direction to the Associations to further disburse the aid to members of the fund in accordance with the scheme so enacted. The

entire exercise as aforesaid is required to be completed before next date of listing of this petition.

2. The Trustees Committee is further directed to consider and decide all the applications pending before it for disbursement of aid to the widows of Advocates and also to the other claimants. Such applications are required to be considered and decided by the Trustees Committee within a period of one month from today.'

22. When the matter was thereafter taken up on 14.5.2020, it was brought to the notice of the Court that the funds in hand were inadequate and thus the Trustees Committee constituted under the Uttar Pradesh Advocates' Welfare Fund Act, 1974 had not been in a position to formulate a viable scheme to consider the release of funds to the Members of the recognized Bar Associations in the State of Uttar Pradesh.

23. Upon noting the position that the liabilities of the Committee exceeded the funds available, the Bench, specifically invoking Section 5 of the U.P. Advocates' Welfare Fund Act, 1974, observed that the Committee could also invoke its powers to borrow funds for onward transmission to the Advocates. The TNAWFA also contains a similar provision in Section 10 thereof.

24. We are of the considered view that the efforts of the BCTNP must be more aggressive and it cannot rest content with the payment of Rs.4000 per advocate. In any event, no payment at all has been made to the Clerks. While there may be no provision available as of now to provide for interim payments, the present circumstances warrant urgent and immediate amendments to the provisions of the Act/relevant Rules to enable the BCTNP to release some portion of the funds held in trust by the Welfare Fund to the advocates, as an interim measure. This is our strong and urgent recommendation and we urge the respondents to take necessary action as aforesaid, at the earliest, and at any rate, before the next hearing of this matter. The PIL is closed in view of our observations as above. However, the issue raised herein remains alive and within our anxious consideration. No costs. Connected Miscellaneous Petition is closed.

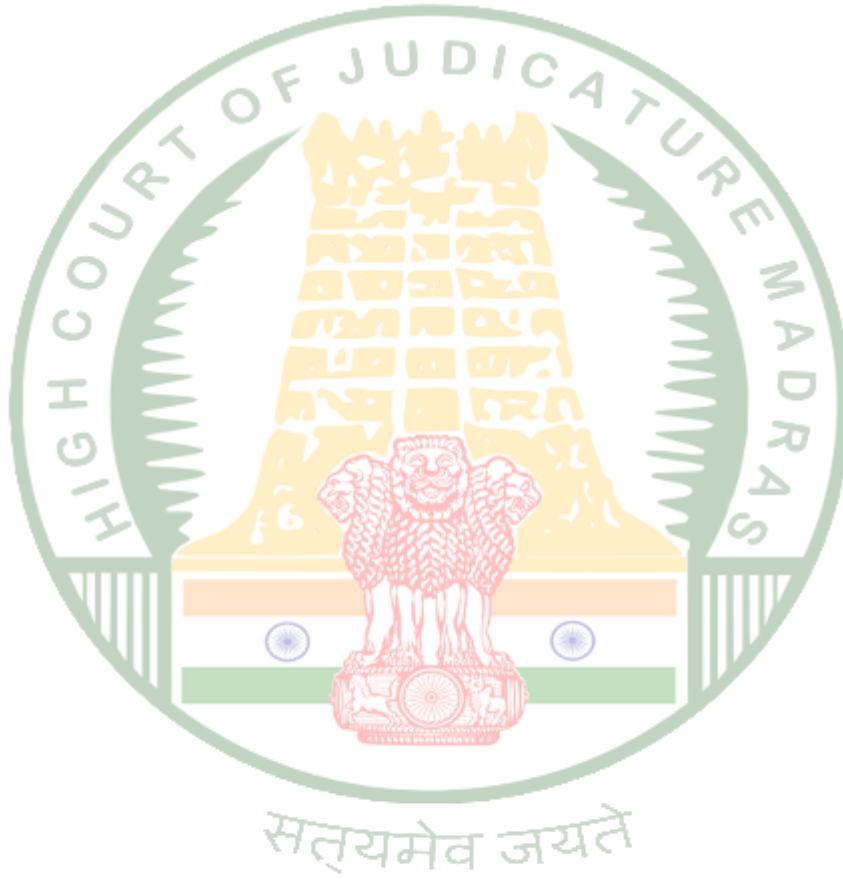
25. Place this matter to await compliance with the recommendations as suggested aforesaid, on 01.07.2020. Registry to upload this order forthwith upon pronouncement.

[M.S.N.,J] [A.S.M., J]

16.06.2020

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Internet : Yes



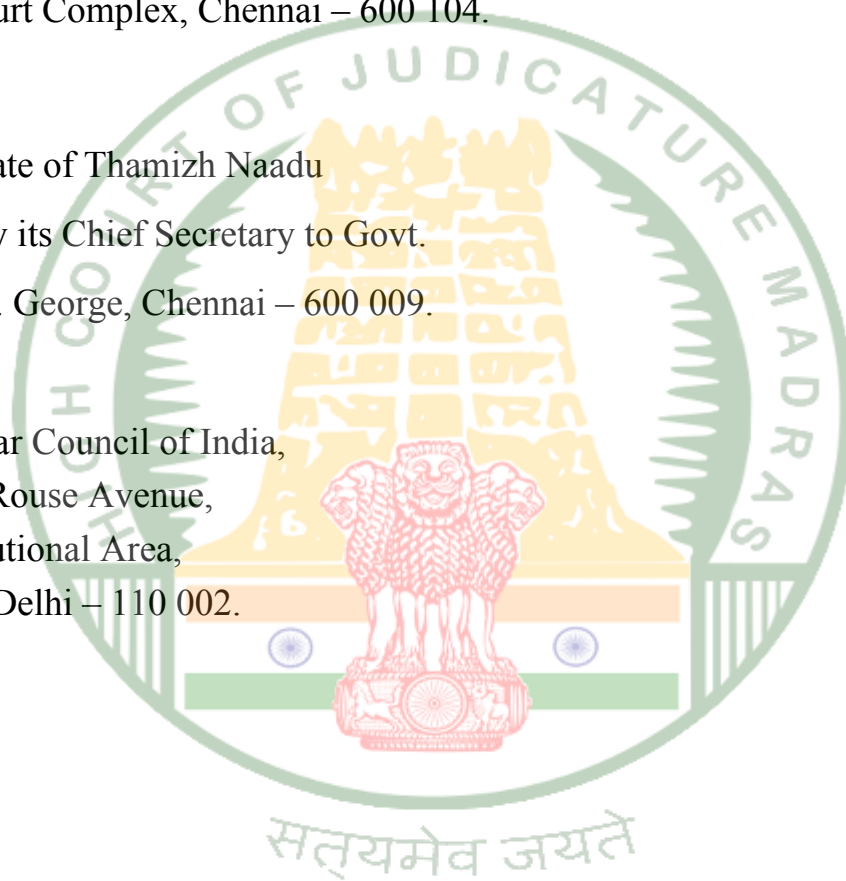
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To

1.The Chairman and Members of the Bar Council of
Thamizh Naadu and Puducherry,
rep.by its Secretary,
High Court Complex, Chennai – 600 104.

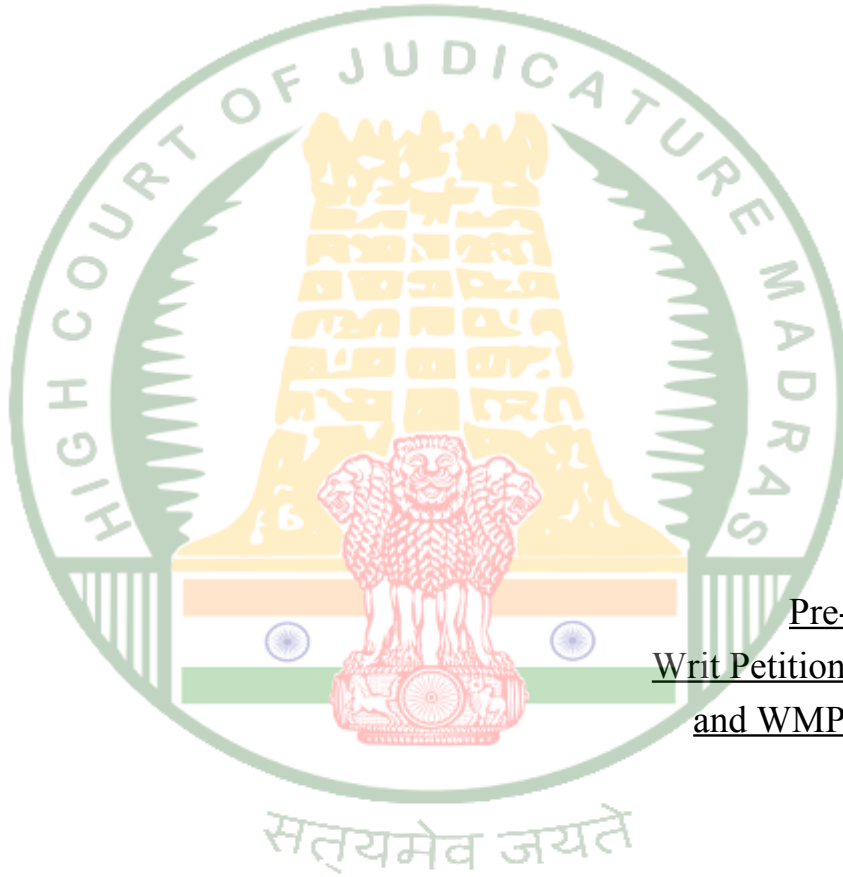
2.The State of Thamizh Naadu
Rep. by its Chief Secretary to Govt.
Fort St. George, Chennai – 600 009.

3. The Bar Council of India,
21 – Rouse Avenue,
Institutional Area,
New Delhi – 110 002.



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M.SATHYANARAYANAN, J.,
AND
DR.ANITA SUMANTH, J.,
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Pre-delivery order in
Writ Petition No 7419 of 2020
and WMP No.8886 of 2020

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Dated: 16 .06.2020

W.P.No.7419 of 2020
and WMP No,8886 of 2020

M.SATHYANARAYANAN,J.
AND
Dr.ANITA SUMANTH,J.

Upon pronouncement of this order, all learned counsel express a view that the Bar Council of India is a necessary party in order to facilitate compliance with the recommendations made by us.

2. Thus, at joint request of all learned counsel, we suo motu implead the Bar Council of India, 21 – Rouse Avenue, Institutional Area, New Delhi – 110 002 as third respondent to this Writ Petition. Mr.S.R.Ragunathan, learned counsel is present and accepts notice on behalf of the Bar Council of India.

3. Learned counsel for the petitioner will serve a complete set of papers upon Bar Council of India and its counsel through e-mail as well.

4. List on 01.07.2020, by which time, all parties are requested to comply with the recommendations made hereinabove.

(M.S.N.,J)

(A.S.M.,J)

16.06.2020

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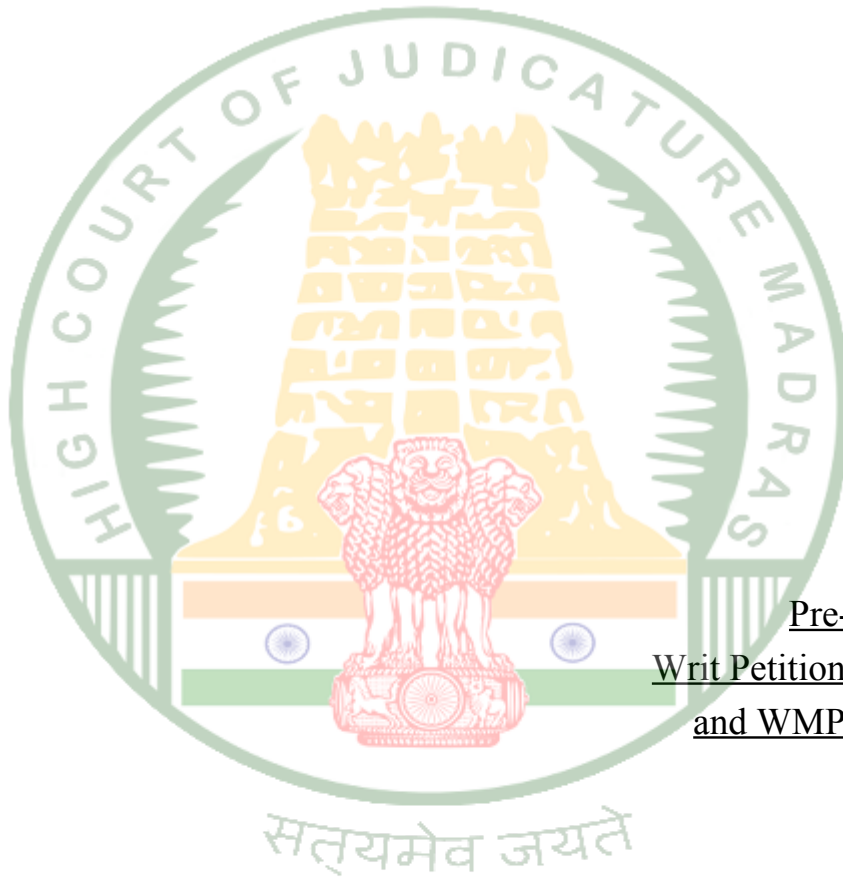
Note: i) Registry is directed to carry out necessary amendments to the cause title forthwith.

ii) Registry is also directed to forward a copy of this order to the Bar Council of India forthwith.



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M.SATHYANARAYANAN, J.,
AND
DR.ANITA SUMANTH, J.,
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Writ Petition No 7419 of 2020
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Dated: 16 .06.2020