

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Ninth day of August Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE M.M.SUNDRESH

AND

THE HON`BLE MR JUSTICE T.RAJA

AND

THE HON`BLE MR JUSTICE K. RAVICHANDRABAABU

WA.Nos.1590 and 1670 of 2015

THE CHAIRMAN,
BAR COUNCIL OF INDIA,
NEW DELHI.

[APPELLANT IN WA.1590/2015]

THE CHAIRMAN AND
SECRETARY, BAR COUNCIL OF
TAMILNADU PUDUCHERRY, HIGH COURT
BUILDING, CHENNAI 104.

[APPELLANT IN WA.1670/2015]

Vs

1 S.M.ANANTHA MURUGAN,
ADVOCATE, S/O. S.MARIYAPPAN, 4/730 KURICHI
ST, TAHSILDAR NAGAR, MADURAI 20.

[1 TO 13 RESPONDENTS IN WA.1590/2015]

2 THE CHAIRMAN AND SECRETARY,
BAR COUNCIL OF TAMILNADU AND PONDICHERRY
HIGH COURT BUILDING, CHENNAI 600 104.

3 THE DIRECTOR GENERAL OF
POLICE, O/O.DIRECTOR GENERAL OF POLICE,
KAMARAJ SALAI, CHENNAI 600 004.

4 THE INSPECTOR GENERAL OF
POLICE, SOUTH ZONE, MADURAI.

5 THE INSPECTOR GENERAL OF
POLICE, NORTH ZONE, CHENNAI.

6 THE INSPECTOR OF GENERAL
POLICE, WEST ZONE, COIMBATORE.

7 THE INSPECTOR GENERAL OF
POLICE, CENTRAL ZONE, TRICHY.

8 UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF LAW AND
JUSTICE, NEW DELHI.

9 LAW COMMISSION OF INDIA,
NEW DELHI.

10 STATE REP. BY LAW SECRETARY,
SAINT GEORGE FORT, CHENNAI 600 009.

11 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

12 CENTRAL BUREAU OF INVESTI
GATION, REP. BY ITS DIRECTOR, NEW DELHI.

13 THE CHAIRMAN,
UNION PUBLIC SERVICE OF COMMISSION,
NEW DELHI.

1 S.M.ANANTHA MURUGAN, [1 TO 12 RESPONDENTS IN WA.1670/2015]
ADVOCATE, 4/730, KURICHI STREET,
TAHSILDAR NAGAR, MADURAI 20.

2 THE CHAIRMAN,
BAR COUNCIL OF INDIA, 21, ROUSE AVENUE,
INSTITUTIONAL AREA, NEW DELHI 110 002.

3 THE DIRECTOR GENERAL OF
POLICE, O/O. DIRECTOR GENERAL OF POLICE,
KAMARAJAR SALAI, CHENNAI 4.

4 THE INSPECTOR GENERAL OF
POLICE, SOUTH ZONE, MADURAI.

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10 STATE,
REP BY LAW SECRETARY, SAINT GEORGE FORT,
CHENNAI 600 009.

11 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

12 THE CENTRAL BUREAU OF
INVESTIGATYION, REP. BY ITS DIRECTOR,
NEW DELHI.

13 THE CHAIRMAN, UNION PUBLIC SERVICE COMMISSION,
NEW DELHI.

(1)Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the CRL.OP.(MD)NO.14573/2014 [in WA.1590/2015] and ;

(2)Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the CRL.OP.(MD)NO.14573/2014 [in WA.Nos.1670/2015]

Order: This Appeal coming on for orders on this day upon perusing the Grounds of appeal, the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the (1) CRL.OP. (MD)NO.14573/2014 (2)CRL.OP.(MD)NO.14573/2014 And all other papers material to this case and upon hearing the arguments of M/S.S.R.RAJAGOPAL, Advocate for the appellant in WA.No.1590/2015 and of MR.J.POTHIRAJ, Advocate for appellant in WA.No.1670/15 and of the court made the following order:-

(delivered by **M.M.SUNDRESH, J.**)

"The first thing we do, let us kill all the lawyers" King Henry VI - Shakespeare.

2.The above words signify the importance of lawyer qua society that existed hundreds of years ago. With the passage of time, it has

become more pronounced with the complexities social problems.

3. Nizer Louis:-

"I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure."

Justice Frankfurter:

"I think a person who throughout his life is nothing but a practising lawyer fulfils a very great and essential function in the life of society. Think of the responsibilities on the one hand, and the satisfaction on the other, to be a lawyer in the true sense."

4. The following is the observation on the pivotal role destined for a lawyer in **Noor Mohammed Vs. Jethanand and Another ((2013) 5 SCC 202)** :

18. In this context, we may refer to the pronouncement in *Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra ((1984) 2 SCC 556: 1984 SCC (Cri) 335)*, wherein the Court observed that:

"9.....An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need."

.....

21. While recapitulating the duties of a lawyer towards the Court and society, being a member of the legal profession, this Court in *O.P.Sharma Vs. High Court of P & H ((2011) 6 SCC 86: (2011) 2 SCC (Cri) 821)* has observed that:

"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."

5. In **S.M.Anantha Murugan Vs. The Chairman, Bar Council of India,**

New Delhi (2015 (6) CTC 22), the following judgments have been quoted with profit:

13.....

(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."

(Emphasis supplied)

6. With the above backdrop, let us analyse the issue involved before us, it is as framed by the Division Bench in W.P.No.34630 of

2016 etc., batch dated 21.10.2016. We have also invited all the members of the Bar who are willing to argue for both sides. This is also for the reason that answering the reference would impact the other pending writ petitions.

7. Heard the learned counsels appearing for the parties and perused the written submissions.

8. Right to practice is governed by the statute viz., Advocates Act, 1961 and the Bar Council of India rules. Therefore, until and unless the qualification prescribed and conditions mentioned are satisfied, a candidate cannot seek to enrol himself as a lawyer. Such a regulation cannot be termed as arbitrary or illegal. It being a part of law, a due compliance is mandatory.

9. Considering the aforesaid issue, in **N.K.Bajpai Vs. Union of India ((2012) 4 SCC 653)** the Apex Court has held as follows:

"24. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practise and an advocate alone is the person who can practise before the courts, tribunals, authorities and persons. But this right is statutorily regulated by two conditions - one, that a person's name should be on the State rolls and second, that he should be permitted by the law for the time being in force, to practise before any authority or person. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent legislature.

25. Thus, the right to practise is not an absolute right which is free from restrictions and is without any limitation. There are persons like Mukhtars and others, who were earlier entitled to practise before the courts, but the Advocates Act itself took away the right to practise which was available to them prior to its coming into force. Thus, the Advocates Act placed a complete prohibition upon the right to practise of those persons who were not advocates enrolled with the State Bar Council. Therefore, the right to practise, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental right under Article 19 (1)(g) of the Constitution is subject to reasonable restrictions.

26. An argument could be raised that a person who has obtained a degree of law is entitled to practise anywhere in India, his right, as enshrined in the Constitution and under the Advocates Act cannot be restricted or regulated

and also that it is not necessary for him to enrol himself on any of the State rolls. This argument would be fallacious in the face of the provisions of the Advocates Act as well as the restrictions contemplated in Article 19 (6) of the Constitution. The legislature is entitled to make a law relating to the professional or technical qualifications necessary for carrying on of that profession.

xxx xxx xxx

59.As already noticed by us above, the right to practise law is a statutory right. The statutory right itself is restricted one. It is controlled by the provisions of the Advocates Act, 1961 as well as the Rules framed by the Bar Council under that Act. A statutory right cannot be placed at a higher pedestal to a fundamental right. Even a fundamental right is subject to restriction and control. At the cost of repetition, we may notice that it is not possible to imagine a right without restriction and control in the present society. When the appellants were enrolled as advocates as well as when they started practising as advocates, their right was subject to the limitations under any applicable Act or under the Constitutional limitations, as the case may be”.

10.The above decision has been quoted with approval in **Jamshed Ansari Vs. High Court of Judicature at Allahabad and Others ((2016) 10 SCC 554)** .

11.Section 24 A of the Advocates Act, 1961 bars a convicted person of an offence involved in moral turpitude from being admitted into the State roll. Noting the onset of criminalisation of the Bar, a learned single Judge of this Court in **S.M.Anantha Murugan Vs. The Chairman, Bar Council of India, New Delhi (2015 (6) CTC 22)** issued a series of directions to the Bar Council of India. A perusal of the above said order would show that they are recommendatory and by way of an interim measure especially with reference to the admission of such of those candidates with serious offences. The following are the relevant paragraphs:

25. *If a person accused of criminal offences is allowed to enrol, he would stand as an accused in one case and in some other cases, he would be representing as an advocate. Such an incongruous situation should be avoided. Persons with good reputation, character, moral values, ethics, integrity and having commitment to the society, alone are required to enter into the profession. Criminal elements, bootleggers, Communal leaders/sponsored candidates,*

political leaders and persons with questionable extremist ideology get proper protection by having law degrees and hence they invariably get admission in law colleges, which are mostly letter pad colleges and purchase degree. Therefore, admission of these elements into law colleges have to be prevented by getting antecedent certificates.

26. The echo of the criminal elements already in the profession, is heard by way of boycotts even for trivial issues, creating a situation to exhibit unruly behaviour before the Courts and for threatening Judicial Officers for favourable orders. Taking law in their hands, the so-called lawyers are indulging in criminal activities like dispossession of properties by force illegally in connivance with criminals and unruly elements, attacking police officials invariably in Court campus, barging into Police Stations, threatening the police officials and whisking away accused from police stations highhandedly and involving in clashes affecting and shaking the rule of law. These kinds of incidents are very many and they were never heard of 30 years ago, in the history of legal profession. It is ideal to have law graduates without criminal cases. However, sometimes, nowadays, very easily, cases are being foisted to wreck vengeance by the enemies, by relatives viz. Family disputes, matrimonial disputes and because of that, future of many of the innocent people cannot be spoiled. Therefore, in an attempt to make difference in cases, this Court classifies as (a) bailable offences attracting punishment upto 3 years, compoundable offences including family, matrimonial and civil disputes and (b) non-bailable offences and heinous crimes. If a candidate has a criminal case attracting punishment upto 3 years can be granted provisional admission in law colleges and the provisional enrolment shall be subject to result of the criminal case. Merely because this Court permits admission into law colleges and conditional enrolment to the candidates, who are said to have committed minor offences (upto 3 years punishment), it does not mean that this Court has approved entry of those alleged offenders. If non-bailable offences, heinous crimes and white collar crimes are committed, those candidates cannot get either law college admission or enrolment. Therefore, it is strongly recommended that the Parliament amend the Advocates' Act suitably incorporating the provisions for disqualifying persons accused of offences except bailable offences attracting upto 3 years punishment, compoundable offences

either from getting into law colleges or entering into the profession and convicted persons, as it has become necessary.

Till the amendment is brought in, to safeguard the profession and to enable smooth functioning of Courts, there shall be a direction to the Bar Council of India and Bar Councils,

a) Not to enrol any candidate accused of offences attracting punishment exceeding 3 years except bailable offences attracting punishment upto 3 years, and compoundable offences including matrimonial, family and civil dispute offences;

b) persons who had suffered conviction in any criminal case; and

c) persons who have been dismissed or removed from any service or left service pursuant to any departmental action/domestic proceedings in any service.

d) Bar councils are to grant conditional/provisional enrolment to law graduates, who are having criminal cases involving bailable offences attracting punishment upto 3 years and compoundable offences including matrimonial, family and civil disputes and the Bar Council shall open a separate file/register for this specific purpose which shall contain the number of the case, offences involved, name of the police station, and the court shall direct the police station to give information about the disposal of the case disclosing the result viz. conviction or acquittal; and

e) If the candidates suffer any conviction, the Bar Councils, immediately issuing show cause notice shall revoke provisional enrolment of such convicted persons as advocates from the rolls unless the conviction to set aside is informed to the Bar Council with a certified copy of such judgement.

f) If any above mentioned case is pending against the candidates, they cannot be admitted into law

colleges except on acquittal, as these candidates will not have mind set to learn law and would tend to spoil other students. Therefore, Bar Council is directed to direct all Law Institutions, either private or public, not to admit the students without antecedent verification certificates. If any criminal case except excepted categories mentioned above, is revealed in the verification, Law Colleges shall not admit those candidates.

12. This order of the learned single Judge which involves 14 directions, though some of them are recommendatory in nature, was put into challenge by the Bar Council of India. Direction No.3 is extracted herein:

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

13. In **W.P.No.2309 of 2016 (S.Manikandan Vs. The Secretary, Tamil Nadu Bar Council, Chennai)**, the Division Bench of this Court has held as under:

3. It appears that the petitioner made an application for enrolment as an Advocate along with necessary documents on 30.03.2015. It appears that the police having apprehended a student, was taken to the police station, where petitioner shown to have went there to rescue the student to get him released, for which, the police were not agreeable. In this regard, a commotion took place. For having went there to the police station with a group of people, FIR has been registered against the petitioner and others, which is pending for more than one year and no final report has been filed so far. There is no act of attempt murder, neither a case of murder nor rape. Technically, either of the respondent authorities are also not taking any decision to enroll the petitioner, eventhough, the petitioner was otherwise found eligible. Mere registration of FIR against any person is not a proof of any offence being committed to disable persons right.

4. In these circumstances, the writ petition is allowed, directing the respondents/bar Council to consider the case of the petitioner for enrolment, after

verification of the documents available. No costs.

Unfortunately, the direction issued by the learned single Judge referred supra has not been brought to the notice of the Division Bench.

14. Under those circumstances, when the writ appeals filed in W.A.Nos.1590 and 1670 of 2015 against the order of the learned single Judge in **S.M.Anantha Murugan Vs. The Chairman, Bar Council of India, New Delhi (2015 (6) CTC 22)** came up for hearing, a reference was made. The Division Bench even on the earlier occasion has noted the fact that Direction No.3 given by the learned single Judge among others are not the issues before it. The following are the points of reference made on 09.11.2016:

"Learned senior counsel appearing for the State Bar Council and the learned counsel appearing for the Bar Council of India have pointed out to us that this Court had only stayed some of the directions passed vide the

impugned judgment of the learned single Judge and not the others. In this context, it is submitted that an order passed in W.P.No.2309 of 2016 dated 21.10.2016 qua the consequences of registration of F.I.R. against the candidates seeking enrolment in the Bar seeks to apparently differ from the impugned directions which have not been stayed. This conflict is stated to have given rise to a piquant situation as to which view is to be followed in principle, as there are numerous cases of similar nature coming up.

2. In the same line, another aspect pointed out to us is that qua education through non-collegiate process for the plus two stage also forming subject matter of an earlier adjudication in W.A.No.1632 of 2015 decided on 02.02.2016, but now another co-ordinate bench of this Court in a batch of petitions appears to have taken a contrary view in W.P.No.34630 of 2016 and connected matters decided on 21.10.2016. Thus, in case of either of the views being followed, contempt proceedings are stated to be arising for non-compliance with the apparent contrary directions.

3. We are, thus, of the view that both the aforesaid questions should be referred to a larger Bench to obviate the possible conflict of views and the consequences thereof.

4. We may note that a Special Bench has already been constituted by the Chief Justice to hear matters pertaining to Bar Council and that would include legal education also and thus, all matters in this behalf ought to be listed

before the Special Bench."

15. Insofar as the 2nd issue namely, Education through non-collegiate process for +2 stage is concerned, we have already, by our order dated 14.7.2017, directed the Registry to place the matter before some other Full Bench, after obtaining necessary orders, for the reasons stated therein. Therefore, we proceed to decide the 1st issue as hereunder.

16. Learned counsels appearing for the petitioners would submit that in the absence of any bar for a candidate to get himself admitted on the rolls of the State Bar Council, despite the pendency of a criminal case, such a candidate cannot be prevented from his enrolment. A mere registration of F.I.R. or pendency of a criminal case would not constitute a bar.

17. Learned senior counsel appearing for the Bar Council of Tamil Nadu and the learned counsel appearing for the Bar Council of India submit that what has been done by the learned single Judge is only an interim measure. The recommendation of the learned single Judge is being considered, though the proposed amendments do not strictly cover the said recommendation. However, if we direct so, the said issue would be looked into. Therefore, references will have to be answered accordingly.

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

difference in the thinking process adopted by the learned single judge in **S.M.Anantha Murugan Vs. The Chairman, Bar Council of India, New Delhi (2015 (6) CTC 22)** and the division bench in W.P.No.2309 of 2016 dated 21.10.2016 (**S.Manikandan Vs. The Secretary, Tamil Nadu Bar Council, Chennai**). The observation of the Division Bench that mere registration of F.I.R. would not take away the right to get enrolled has to be seen in its own context. Suffice it is to state that the earlier decision of the learned single Judge and the observation made by the Division Bench on 30.10.2015 have not been brought to the knowledge of the Division Bench. Thus, Direction No.3 issued by the learned single Judge would stand.

19.The aforesaid direction has not been seriously challenged by the Bar Council of India. In fact, learned counsel appearing for the Bar Council of India fairly submits that the draft amendment has not looked into this aspect and if directions are given, appropriate rule would be brought forth.

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

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

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

(iii) *Direction No.3 issued by the learned single Judge is only a temporary measure.*

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

(v) *However any such admission if made already shall not be disturbed.*

-sd/-

09/08/2017

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE CHAIRMAN AND SECRETARY,
BAR COUNCIL OF TAMILNADU AND PONDICHERRY
HIGH COURT BUILDING, CHENNAI 600 104.

2 THE DIRECTOR GENERAL OF
POLICE, O/O.DIRECTOR GENERAL OF POLICE,
KAMARAJ SALAI, CHENNAI 600 004.

3 THE INSPECTOR GENERAL OF
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POLICE, WEST ZONE, COIMBATORE.

6 THE INSPECTOR GENERAL OF
POLICE, CENTRAL ZONE, TRICHY.

7 THE SECRETARY,
UNION OF INDIA,
MINISTRY OF LAW AND JUSTICE, NEW DELHI.

8 LAW COMMISSION OF INDIA,
NEW DELHI.

9 THE LAW SECRETARY,
STATE OF TAMILNADU.
SAINT GEORGE FORT, CHENNAI 600 009.

10 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

11 THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI.

12 THE CHAIRMAN,
UNION PUBLIC SERVICE OF COMMISSION,
NEW DELHI.

13 THE CHAIRMAN,
BAR COUNCIL OF INDIA,
NEW DELHI.

14 THE CHAIRMAN AND
SECRETARY, BAR COUNCIL OF
TAMILNADU PUDUCHERRY, HIGH COURT
BUILDING, CHENNAI 104.

15 THE SECTION OFFICER,
LEGAL CELL, HIGH COURT, CHENNAI.

16 THE CHAIRMAN,
BAR COUNCIL OF INDIA, 21, ROUSE AVENUE,
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17 THE DIRECTOR GENERAL OF
POLICE, O/O. DIRECTOR GENERAL OF POLICE,
KAMARAJAR SALAI, CHENNAI 4.

18 THE SECRETARY
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19 THE SUPERINTENDENT OF POLICE
COIMBATORE DISTRICT COIMBATORE

20 THE DEPUTY SUPERINTENDENT
OF POLICE PERUR SUB DIVISION
COIMBATORE DISTRICT

21 THE INSPECTOR OF POLICE
VADAVALLI POLICE STATION
COIMBATORE DISTRICT

22 THE CHAIRMA
3 YEARS LLB ADMISSION 2016-17 THE TAMILNADU
DR.AMBEDKAR LAW UNIVERSITY CHENNAI-600 028

23 THE TAMIL NADU DR.AMBEDKAR
LAW UNIVERSITY REP BY THE CHAIRMAN
POOMPOZHIL NO.5 DR.D.G.S. DINAKARAN SALAI
CHENNAI-600 028

24 THE BAR COUNCIL OF INDIA
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25 THE CHAIRMAN
LAW ADMISSIONS 2015-2016 THE TAMIL NADU DR.
AMBEDKAR LAW UNIVERSITY POOMPOZHIL NO.5
DR. D.D.G.S.DHINAKARAN SALAI CHENNAI - 600 028

26 THE REGISTRAR (JUDICIAL),
HIGH COURT, CHENNAI

27 THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

28 THE SECTION OFFICER
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

29 THE SECTION OFFICER,
JUDICIAL SECTION,
HIGH COURT, CHENNAI.

30 THE SECTION OFFICER,
WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

31 THE SECTION OFFICER,
WRIT SECTION,
HIGH COURT, CHENNAI.

C.C. to M/S. S.R.RAJAGOPAL Advocate on payment of necessary charges
C.C. to MR.J.POTHIRAJ, Advocate on payment of necessary charges

Order

in

WA.Nos.1590 and 1670 of 2015

Date :09/08/2017

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
T.R (19/09/2017)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Ninth day of August Two Thousand Seventeen

PRESENT

THE HON`BLE MR JUSTICE T.RAJA

WA.Nos.1590 and 1670 of 2015

THE CHAIRMAN, [APPELLANT IN WA.1590/2015]
BAR COUNCIL OF INDIA,
NEW DELHI.

THE CHAIRMAN AND [APPELLANT IN WA.1670/2015]
SECRETARY, BAR COUNCIL OF
TAMILNADU PUDUCHERRY, HIGH COURT
BUILDING, CHENNAI 104.

Vs

1 S.M.ANANTHA MURUGAN, [1 TO 13 RESPONDENTS IN WA.1590/2015]
ADVOCATE, S/O. S.MARIYAPPAN, 4/730 KURICHI
ST, TAHSILDAR NAGAR, MADURAI 20.

2 THE CHAIRMAN AND SECRETARY,
BAR COUNCIL OF TAMILNADU AND PONDICHERRY
HIGH COURT BUILDING, CHENNAI 600 104.

3 THE DIRECTOR GENERAL OF
POLICE, O/O.DIRECTOR GENERAL OF POLICE,
KAMARAJ SALAI, CHENNAI 600 004.

4 THE INSPECTOR GENERAL OF
POLICE, SOUTH ZONE, MADURAI.

5 THE INSPECTOR GENERAL OF
POLICE, NORTH ZONE, CHENNAI.

6 THE INSPECTOR OF GENERAL
POLICE, WEST ZONE, COIMBATORE.

7 THE INSPECTOR GENERAL OF
POLICE, CENTRAL ZONE, TRICHY.

8 UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF LAW AND
JUSTICE, NEW DELHI.

9 LAW COMMISSION OF INDIA,
NEW DELHI.

10 STATE REP. BY LAW SECRETARY,
SAINT GEORGE FORT, CHENNAI 600 009.

11 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

12 CENTRAL BUREAU OF INVESTI
GATION, REP. BY ITS DIRECTOR, NEW DELHI.

13 THE CHAIRMAN,
UNION PUBLIC SERVICE OF COMMISSION,
NEW DELHI.

1 S.M.ANANTHA MURUGAN, [1 TO 12 RESPONDENTS IN WA.1670/2015]
ADVOCATE, 4/730, KURICHI STREET,
TAHSILDAR NAGAR, MADURAI 20.

2 THE CHAIRMAN,
BAR COUNCIL OF INDIA, 21, ROUSE AVENUE,
INSTITUTIONAL AREA, NEW DELHI 110 002.

3 THE DIRECTOR GENERAL OF
POLICE, O/O. DIRECTOR GENERAL OF POLICE,
KAMARAJAR SALAI, CHENNAI 4.

4 THE INSPECTOR GENERAL OF
POLICE, SOUTH ZONE, MADURAI.

5 THE INSPECTOR GENERAL OF
POLICE, NORTH ZONE, CHENNAI

6 THE INSPECTOR GENERAL OF
POLICE, WEST ZONE, COIMBATORE.

7 THE INSPECTOR GENERAL OF
POLICE, CENTRAL ZONE, TRICHY.

8 UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF LAW AND
JUSTICE, NEW DELHI.

9 LAW COMMISSION OF INDIA,
NEW DELHI.

10 STATE,
REP BY LAW SECRETARY, SAINT GEORGE FORT,
CHENNAI 600 009.

11 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

12 THE CENTRAL BUREAU OF
INVESTIGATION, REP. BY ITS DIRECTOR,
NEW DELHI.

13 THE CHAIRMAN, UNION PUBLIC SERVICE COMMISSION,
NEW DELHI.

(1)Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the CRL.OP.(MD)NO.14573/2014 [in WA.1590/2015] and ;

(2)Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the CRL.OP.(MD)NO.14573/2014 [in WA.Nos.1670/2015]

Order: This Appeal coming on for orders on this day upon perusing the Grounds of appeal, the order of THE HON'BLE MR.JUSTICE N.KIRUBAHARAN, dated 06.10.2015 and made in the exercise of the Special Original Jurisdiction of the High Court in the (1) CRL.OP.(MD)NO.14573/2014 (2)CRL.OP.(MD)NO.14573/2014 And all other papers material to this case and upon hearing the arguments of M/S.S.R.RAJAGOPAL, Advocate for the appellant in WA.No.1590/2015 and of MR.J.POTHIRAJ, Advocate for appellant in WA.No.1670/15 and of the court made the following order:-

I had the privilege of going through the order authored my learned Brother M.M. Sundresh, J., in the above batch of cases, answering one of the two issues (Issue No.1) referred to this Full Bench by the First Bench vide orders, dated 09.11.2016, made in W.A. Nos.1690 & 1670 of 2015,

"... an order passed in W.P.No.2309 of 2016 dated 21.10.2016 qua the consequences of registration of F.I.F. Against the candidates seeking enrolment in the bar seeks to apparently differ from the impugned directions which have not been stayed. This conflict is stated to have given rise to a piquant situation as to which view is to be followed in principle, as there are numerous cases of similar nature coming up.

2. In the same line, another aspect printed out to us is that qua education through non-collegiate process for the plus two stage also forming subject matter of an earlier adjudication in W.A. No. 1632 of 2015 decided on 02.02.2016, but now another co-ordinate bench of this court in a batch of petitions appears to have taken a contrary view in W.P. No.34630 of 2016 and connected matters decided on 21.10.2016.

Thus, in case of either of the views being followed, contempt proceedings are stated to be arising for non-compliance with the apparent contrary directions.

3. We are, thus of the view that both the aforesaid questions should be referred to be larger bench to obviate the possible conflict of views and consequences thereof."

2. While concurring with the ultimate conclusions arrived at by my learned Brother on the aforesaid issue, in an endeavour to record my own reasons and to reiterate certain core aspects, I deem it apt to add the following.

3. Having regard to the direction given by a Division Bench in S.Manikandan vs. The Secretary, Tamil Nadu Bar Council & 3 others (order dated 21.10.2016 passed in W.P. No.2309 of 2016), ordering the Bar Council to consider enrollment of the petitioner therein against whom an FIR was kept pending by the police for more than one year, vis-a-vis the other passed by a learned single Judge in S.M.Anantha murugan Vs. The Chairman, Bar Council of India, New Delhi & Others (2015-6-CTC-22), among other things, directing (as per Direction No.3) the Bar Council of India to, in turn, direct the State Bar Councils not to enroll any law graduate with pending criminal cases except bailable cases attracting punishment upto three years and compoundable offences involving matrimonial, family and civil disputes, till changes are brought in the Advocates' Act & the Bar Council of India Rules, there arose a piquant situation as to which of the aforesaid two views is to be followed since the direction of the learned single Judge, when challenged before the First Bench, was not stayed. In the above backdrop, the first issue came to be referred for an authoritative answer.

4. It must be pointed out, at the first instance, that the decision in Manikandan's case, directing the Bar Council to consider for enrollment of the petitioner therein, came to be rendered having regard to the factual matrix that the petitioner, a law graduate, who went to rescue a student detained in the police station, was slapped with an FIR which was kept pending for more than one year. In that

background, be recording a factual finding that it was not a case of attempt to murder or rape and that the FIR was kept pending for more than one year, the Division Bench had thought it fit to issue the direction as aforementioned.

5. But, coming to the order passed by the learned single Judge in Anantha Murugan's case (cited supra), one may have to look at the underlying factors that might have impelled the learned Judge to issue such a direction.

6. Even in the preamble portion of the Order, my learned Brother M.M.Sundresh, J. Has highlighted the excerpt by Justice Frankfurter as to how a lawyer should be in the true sense and also the tormenting note from the 14th Law Commission report of Mr.M.C.Setalvad that the position in regard to legal education in the country definitely deteriorated, even in the year 1958. But, so many years having passed after the said nothing of Mr.M.C.Setalvad, today's tart reality is, the pristine image of the legal profession has not been restored and it is high-time to implement some sharp remedial measures to stop any further deterioration and to strengthen the system at the grassroots. The learned single Judge, having witnessed the great ordeal faced by the entire judiciary in the State at the hands of a group of some unruly Advocates and the menace posed by them to halt the routine functioning of the judiciary, in his wisdom, thought it fit to issue the direction in question to streamline the things at the very entry level of the legal profession.

7. From my personal experience, I myself have seen that, in the past 10 years, the Courts, from Subordinate level to High Court, both Madurai Bench as well as the Principal Seat, witnessed a sort of unprecedented chaos created by some factions of unruly lawyers and thereby the productive transaction of judicial business was completely brought to a standstill form quite a long time. To quote a few incidents - the Madurai District Court was virtually closed down for about six months at the instance of some unruly Advocates belonging to different Bar Associations on the ground that, against one of their colleagues, an FIR was registered over his clash with the toll-gate staff in refusing to pay the Toll-fee for the reason that he was an Advocate. Likewise, against the orders passed by the High Court mandating the two-wheeler riders to wear helmets, a rebellious faction of Advocates took out a two-wheeler procession without wearing helmets from the District Court campus and, after reaching the Madurai High Court compound and burning the effigy of the author of the Judgment, they barged into the Court Halls in the Madurai Bench and completely stalled the judicial proceedings and such condemnable act continued for about six months. On another occasion, not comfortable with the Roster-judicial portfolio allotment by the then Honourable Chief Justice, a group of Advocates from Madurai & surrounding Bar Associations resorted to boycott to presurize the Hon'ble The Chief Justice to revise the Roster suiting

to their expectations. When their unreasonable and unfair demands were not met, by carrying loud-speakers in hands, they started barging into court hall and, on 03.07.2012, they forcibly entered into court Hall No.2 at the Madurai Bench and converted the court Hall virtually into a Dining Hall for eating Biryani and, in spite of the intervention by the Registrar, they exhibited defiance. Similarly, about 10 Advocates, with a demand to declare Tamil as Official Language of the High Court, barged into the First Court Hall in the Principal Seat at 10 A.M. on 14.09.2015, carrying Banners and thereby sabotaged the entire court proceedings. It is also apt to recall a brazen instance happened while I was holding the District Portfolio of Ramnad District. On 17.03.2015, at about 9.45 A.M., While the staff members of the DM-cum-JM Court, Rameswaram, were preparing the court for the proceedings of that day, some of the Advocates, over an issue of delay in processing the payment application by the Judicial Officer, locked the Main Gate of the Court, thereby, nobody was able to enter into the premises and also, the persons already inside the court got stuck like captives. Persuasion by the Judicial Officer, who came there immediately after receiving the intimation, to open the Main Gate, was not even taken heed of by those rebellious Advocates and ultimately, through the private entrance meant for the Judicial Officer, he went to the Court and commenced the court proceedings, whereupon, the violent Advocates locked the private entrance door also and shouted against the Judicial Officer in abusive language and singular tone and further, they forcibly drove away the litigant public already assembled in the Court Hall. When contempt proceedings were initiated against those who indulged in the incident, a Division Bench, by misplacing sympathy on them, closed the contempt proceedings based on a compromise memo. Having witnessed such incessant and frequent acts of vandalism by a fraction of Advocates, the average common people/litigants feared even to enter the Court premises where they previously used to come to vindicate their grievances.

8. The above mentioned instances are only a few of the many odd incidents and the learned single Judge, being aware of the same and also of the avowed principle that larger public interest would always prevail over individual interest, might have thought it fit to issue Direction No.3, which is the subject-matter of Reference No.1. of course, it is the golden principle that no one should be condemned before being heard. Equently, the interest of the judiciary and that of the litigant public, being dominant, definitely, the same would over-ride the individual interest. In *Avishek Goenks Vs. Union of India*, (2012) 5 SCC.321, the Apex Court held that even if some individual interests are likely to suffer, such individual or private interests must give in to the larger public interest.

9. In *Union of India V.Sankal Chand* AIR 1977 SC 2328, it was emphasised that,

" 91..... Indeed, the independence of the judiciary is itself a necessitous desideratum of public interest and so interference with it is impermissible except where other considerations of public interest are so strong, and so exercised as not to militate seriously against the free flow of public justice. Such a balanced blend is the happy solution of a delicate, complex, subtle, yet challenging issue which bears on human rights and human justice.....

92.The nature of the Judicial process is such that under coercive winds the flame of justice flickers, faints and fades. The true judge is on who should be beyond purchase by threat or temptation, popularity or prospects. To float with the tide is easy, to counter the counterfeit current is uneasy and yet the Judge must be ready for it."

Therefore, when the learned single judge has issued the direction in question with a noble object to strengthen the edifice of the legal profession and also with a view to uphold the larger interest of the Institution so that only the right & real aspirants alone can enter into the profession, I am of the view that it is a correct decision taken at the right time. Further, as I already mentioned, the direction issued in Manikandan's case (Cited supra) is peculiar to the facts of that particular case. Therefore, the allied issue that contempt proceedings may be said to be arising for non compliance with the apparent contrary directions shall have to be answered that the direction issued in Manikandan has not apparently laid down any law since it is confined to the facts of that particular case, whereas, the decision in Anantha Murugan, in the form of Direction No.3, which is agreed to have been implemented by the Bar Council, would have its application so long as the decision is not overturned in Appeal.

-sd/-

09/08/2017

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE CHAIRMAN AND SECRETARY,
BAR COUNCIL OF TAMILNADU AND PONDICHERRY
HIGH COURT BUILDING, CHENNAI 600 104.

2 THE DIRECTOR GENERAL OF
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3 THE INSPECTOR GENERAL OF
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5 THE INSPECTOR OF GENERAL
POLICE, WEST ZONE, COIMBATORE.

6 THE INSPECTOR GENERAL OF
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7 THE SECRETARY,
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MINISTRY OF LAW AND JUSTICE, NEW DELHI.

8 LAW COMMISSION OF INDIA,
NEW DELHI.

9 THE LAW SECRETARY,
STATE OF TAMILNADU.
SAINT GEORGE FORT, CHENNAI 600 009.

10 THE REGISTRAR GENERAL,
HIGH COURT OF MADRAS, CHENNAI 600 104.

11 THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI.

12 THE CHAIRMAN,
UNION PUBLIC SERVICE OF COMMISSION,
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13 THE CHAIRMAN,
BAR COUNCIL OF INDIA,
NEW DELHI.

14 THE CHAIRMAN AND
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COIMBATORE DISTRICT COIMBATORE

20 THE DEPUTY SUPERINTENDENT
OF POLICE PERUR SUB DIVISION
COIMBATORE DISTRICT

21 THE INSPECTOR OF POLICE
VADAVALLI POLICE STATION
COIMBATORE DISTRICT

22 THE CHAIRMAN
3 YEARS LLB ADMISSION 2016-17 THE TAMILNADU
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26 THE REGISTRAR (JUDICIAL),
HIGH COURT, CHENNAI

27 THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

28 THE SECTION OFFICER
JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

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MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

31 THE SECTION OFFICER,
WRIT SECTION,
HIGH COURT, CHENNAI.

C.C. to M/S. S.R.RAJAGOPAL Advocate on payment of necessary charges
C.C. to MR.J.POTHIRAJ, Advocate on payment of necessary charges

Order

in

WA.Nos.1590 and 1670 of 2015

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