

W.P.No.31281 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.06.2024**PRONOUNCED ON : 03.07.2024**

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**AND****THE HONOURABLE MR.JUSTICE C.KUMARAPPAN****W.P.No.31281 of 2019****and****W.M.P.No.31428 of 2019**

Mr.P.N.Vignesh

... Petitioner

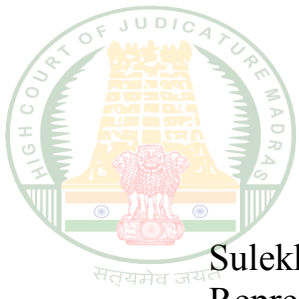
Vs.

1.The Chairman and Members of the Bar Council,
The Bar Council of India, 21, Rouse Avenue,
Institutional Area, New Delhi,
Delhi 110 002.

2.The Chairman and Members of the Bar Council,
The Bar Council of Tamil Nadu and Puducherry,
Gate No.4, High Court Campus, Chennai,
Tamil Nadu 600 104.

3.quikr.in,
Quikr India Private Limited,
Represented by its Managing Director,
Murugesan Complex Road, Thousand Lights West,
Thousand Lights, Chennai 600 006.

4.sulekha.com,



Sulekha.com New Media Private Limited,
Represented by its Managing Director,
484 and 485, 4th Floor, Pantheon Plaza,
Pantheon Road, Egmore,
Chennai 600 008.

5.justdial.com,
Just Dial Limited,
Represented by its Managing Director,
185-187, 3rd Floor, B Block,
Temple Steps, Chennai – Nagapattinam Highway,
Anna Salai, Little Mount, West Saidapet,
Chennai 600 015.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to take appropriate action against respondents 3, 4 and 5 and any other service provider, restraining them from carrying on the business of providing legal services on their web portal or Applications.

For Petitioner	: Mr.Mohammed Fayaz Ali
For R1	: Mr.S.R.Ragunathan
For R2	: Mr.E.K.Kumaresan
For R3 & R4	: No Appearance
For R5	: Mr.Srinath Sridevan Senior Counsel, For Mr.Bharadwaja Ramasubramaniam



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S.M.SUBRAMANIAM, J.

The writ on hand has been filed as a “Pro Bono Publico” in the interest of legal profession. Certain professional misconducts are alleged in the writ petition against the “Online Service Providers”.

2. The core contention of the petitioner is that the respondents 3, 4 and 5 are providing online lawyer services on their respective Domains and Applications, wherein Advocates openly solicit Legal works.

3. Online Service Providers are providing various day to day needs and requirements of general public. Among other requirements such as plumbing services, carpentry services, salon at home, driver, sofa cleaning, maid, baby sitter, cook, the respondents 3, 4 and 5 also offering lawyer services.

4. Upon a search being made for a lawyer, various options are offered such as Property/RERA lawyers, corporate lawyers, consumer lawyers, etc. On selection of the preferred subject, the user is required to provide his contact details and thereafter a verification PIN is sent to the mobile number,



which is to be entered and immediately the next page provides a list of Advocates/Law Firms ranked as “Platinum, “Top Service Provider”, “Top Choice”, “Premium”, and simultaneously calls are made by the Advocates/Law Firms to the user soliciting their Legal work.

5. The petitioner sent representations to the respondents 1 and 2 to initiate appropriate actions to curb the illegal activity of online service providers. Online lawyer services are prohibited under the Bar Council of India Rules and amounts to misconduct under Section 35 of the Advocates' Act. Since no action has been taken by the respondents 1 and 2, the petitioner is constrained to initiate the present writ petition.

6. The learned Senior Counsel appearing on behalf of the 5th respondent would submit that the 5th respondent is providing only online directory services. The 5th respondent is not soliciting works for lawyers. Providing directorate services are permissible under the Rules. Therefore, the 5th respondent is unnecessarily implicated in the present case. However, the learned counsel for the petitioner disputed the same by producing documents, which would reveal that the 5th respondent is also soliciting legal works through various methods. The modus operandi of these service providers are

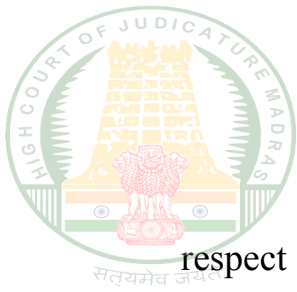


also placed before this Court through documents. This Court carefully considered those documents.

7. Unlike a few other countries, Indian legal profession is unique as we represent selfless courage by spearheading some of the rights based movements in our country. Our Indian freedom movement comprising of some of the best lawyers in the country stands testament to the same. ***Every lawyer in our country is a contributor in the process of delivery of justice. And it is not for any third party to brand or rate the services of a lawyer. Legal profession is not and can never be treated as a business.***

8. Branding culture in the legal profession is detrimental to the society. Ranking or providing customer ratings to lawyers is unheard of and demeans the ethos of the profession. Professional dignity and integrity must never be compromised especially in the legal profession.

9. It is agonising that some of the legal professionals today are trying to adopt a business model. ***Legal service is neither a job nor a business.*** A business is driven purely by profit motive. But in law, larger part is a service to the society. Though a service fee is paid to a lawyer, it is paid out of



respect for their time and knowledge.

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10. The legal profession cannot be viewed with a shallow lens. Some may try to find merit in the argument that with the growing need for professional services, a business model can help in its growth further. But this Court does not affirm this view. The tools employed in the profession can be upgraded or changed based on changing circumstances, (*A classic example of this is of our seamless shift from physical hearing to virtual hearing during the COVID-19 lockdown*). But the spirit and character which is the *Basic Structure* of this profession can never be altered.

11. The object of any business or trade is profit. It cannot be termed as a business, when it is not driven by profit. However legal profession cannot be treated as business. Legal profession can never be profit driven, or only for the rich and mighty. It serves to the needs of anyone and everyone who knock the doors of Justice. ***Law is not about the survival of the fittest but it is more about the survival of the distressed.***

Legal Profession cannot be treated as a business:

12. Many a times Law is referred to as a noble profession and we place



it is a higher pedestal. There is always a sense of dignity and strong principles of ethics attached to this profession. The distinguishing feature of this profession lies in its spirit and character. The lawyers not only owe a duty towards the client but they also have a duty towards the Court. The edifices of the Court are structured by the Constitution. And the Constitution of India is the Grundnorm from which various other laws emanate. The Courts are public institutions characterised by the principles laid down in the Constitution. The lawyers play a major role in this Justice delivery process. The lawyers being officers of the Court are part and parcel of this democratic process. Often the lawyers participation in this justice delivery system is underrated. But it is to be noted that they are singularly the bridge that connects the Judicial chair with the litigants approaching the Courts. And the Courts hold the lawyers in a position of trust. The fundamental duty of a lawyer is to uphold the law whilst fighting for his client's rights. It is not just about securing a favourable order for the client but more about fighting for Justice. This is the predominant reason as to why the legal profession stands apart in both spirit and character from the rest. ***The object of any business is profit but the sole object of the Legal profession is Justice. Truth and Justice can never be traded.*** And lawyers being important elements in this fight for Truth and Justice can never be equated with businessmen or traders.



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Reasons behind no-advertising policy for lawyers:

The rationale behind no advertising policy for lawyers is fourfold:

13. **Firstly**, marketing of lawyers brings down the nobility and integrity of the profession. The process of delivery of Justice is strongly based on the Constitution, and lawyers being the upholders of law cannot treat the profession as a business. It would be contradictory to say that a lawyer who fights for justice is doing so with a profit motive.

14. This Court is appalled to learn that there is a business model being adopted in the profession whereby there are instances of self-branding of lawyers and promotions through advertisements, giving customer ratings to the lawyers and unverified claims of expertise in specific areas of law, enlisting their names in business websites and providing offer price for legal consultations. This is clearly unheard of and will have a detrimental effect in the progress of the profession.

15. It is disheartening to learn that a few websites are selling legal services of lawyers for a fixed price. The petitioner's typed set of documents lists out a few websites which offer legal services. In one such website which

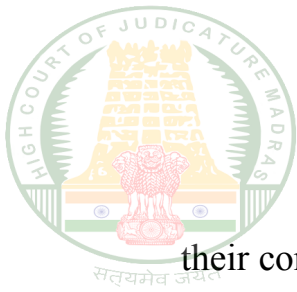


claims to be an advertisement site called quikr.com, there are services listed out in their home page including Home services, B2B Suppliers, Business opportunities, Commercial services, Hobbies and Personal development, Financial services, Repairs and servicing, Astrology, vastu and wellness, beauty and wellness, travel services, event services, Salon at home by At Home Diva, DTH and Set-top boxes,... in this line of services the Security, **Legal** and Agent services are also listed. And once the legal services option is clicked, the search box shows a list of legal services like Child Adoption, Civil Lawyers, Consumer court lawyers, Corporate lawyers, Divorce lawyers, Marriage lawyers etc.

16. Then there are questions been posted from the website like:

- (1) What type of issue needs to be addressed?
- (2) What is the status of the case?
- (3) What service do you need?
- (4) Select locality
- (5) When do you need the service?
- (6) Review details

And after an OTP verification the website lists out names of lawyers and law firms as top service providers. The website also mentions that the customer requirements have been shared with the enlisted service providers and that



their contact details will be shared through phone message.

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17. There are grading such as Platinum, Top Provider etc.. marked aside each lawyer enlisted in the website. Then a message is received whereby the website suggests the names of legal service providers. And the lawyers too send individual messages to the customers/clients whereby they inform that they received a query from quirk.com and that they would be ready to discuss the matter.

18. This is forthright against the Bar Council of India Rules and the websites have also independently provided rating services of lawyers without any basis or authority and the lawyers by enlisting themselves in such websites have brought down the nobility and dignity of the profession.

19. The Court is also shocked to come across an advertisement published in sulekha.com whereby the legal services are enlisted in the similar fashion as mentioned above and they go further on by providing an offer price for legal services.

20. The advertisement reads as follow:



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“Want calls/quotes from multiple service experts OR Avail expert services from VAKILSEARCH at fixed price.

Apply for Mutual Divorce in Chennai

*30% Offer**

Original Price ~~Rs.19000~~

Offer Price Rs.16150

15% Discount

*Additional 15% off as cash back**

Effective price Rs.13300

If you are experiencing marital trouble or are considering a divorce, it is important to understand the legal formalities involved.

Speak to a lawyer experienced in family issues and learn about the legal options available for you, clear your queries and understand the legal procedure involved.

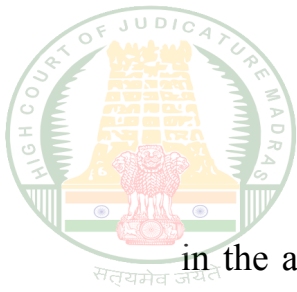
Additional legal actions come with extra charges

(Inclusive of GST) PAY Rs.19057”

[Extracted as it is]

21. The nature of advertisement displayed across in the respondent websites are of the same manner and the lawyers have enlisted themselves in such advertising websites.

22. These sites have degraded the nature of the profession by indulging



in the act of selling the legal services for a price. These advertisements not only interfere with the ethics of the profession but also misguides the public.

There is a high chance whereby people can get misguided through these advertisements and it will also serve as a platform for miscreants.

23. ***Secondly***, such advertisement of lawyers without any regulation can spread misinformation among the public. The Bar council of India is the authority to regulate the standards of Professional conduct and etiquette of lawyers. S.49 of the Advocates Act,1961 stipulate the General power of the Bar Council of India to make rules.

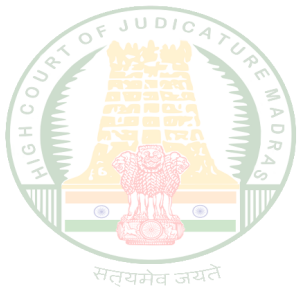
24. The respondent websites hold no authority to provide legal services by enlisting lawyers in their websites nor can they advertise few select lawyers by receiving a commission from them. A relevant question arises here as to under which authority of law do these websites enlist legal services in the nature of a business and under what law have they carried out the act of providing ratings and gradings to select lawyers. This is prima facie against the tenets of the legal professions and the fact that lawyers also have advertised themselves in such websites goes against the standards of professional conduct.



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25. By adopting such advertising strategies for lawyers, the websites end up publishing false and unverified information in their websites. And Internet being a virtual highway for accessing information, today the general public tend to get carried away by these advertisements and in turn end up accessing false information. ***They are prone to be misguided and without any authority to cross check such online information, the public ends up losing faith in the judicial process.***

26. ***Thirdly,*** The object here is to narrow down the chasm of inequality. In professions such as law, it is difficult to establish a level playing field mainly due to economic factors. Such being the scenario, allowing advertisements in this profession will widen the inequality. Lawyers with money power can easily place advertisement and gain an added advantage as compared to others. It is noteworthy that since law cannot be treated as a business, economic factors cannot be used as grading mechanism to decide on categorising a lawyer. Every lawyer has his/her own skill sets and are all contributors in this Justice delivery system. Mere ranking or grading of lawyers based on economic factors or otherwise degrades the virtues of the profession.



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27. Lawyers with more money power can place advertisements across different websites and economically disadvantaged lawyers will be unable to approach these sites. *Moreover a lawyer profession is not a race to the top, it is about service to the downtrodden. Today there are innumerable lawyers who are working pro bono for different public causes. Excellence is not an accident. It always result of sincere effort and intellect execution. In no way can their services be measured monetarily or otherwise. They pragmatically work towards progress of both the Judiciary and the society. Therefore the advertisements of lawyers in websites covertly and overtly stands against elements of fairness and Justice.*

28. Lawyers are defenders for the cause of the oppressed and they strive towards upholding equality under the law. *The reason we wear Black robes holds testament to the fact that all are equal before law. It symbolises impartiality and equality.* There are innumerable jobs where the sole object is money making but legal profession is not a commercial activity.

Rule 36 of the Bar Council of India Rules:

29. It is pertinent to note that the Bar Council Of India Rules clearly



prohibits advocates from advertising or soliciting work directly or indirectly whether by circulars, advertisements, touts, personal communication, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with case where he is engaged or concerned. The only Proviso allowed for advocates is that they can furnish website information as prescribed in the Schedule under intimation to and as approved by Bar Council of India (*hereinafter referred to as BCI*).

30. Non compliance with Rule 36 invites the application of section 35 of the Advocates Act, 1961 dealing with punishment of advocates for misconduct. Hence publication of advertisements as mentioned in Rule 36 by advocates shall be construed as misconduct under the Advocates Act and disciplinary action under the relevant Act and Rules shall follow.

Rule 37 of the BCI Rules:

31. Rule 37 of the BCI rules stipulates as follows;

“An Advocate shall not permit his professional services or his name to be used in aid of or to make possible, the unauthorised practice of law by any



agency”.

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32. It is pertinent to note that the online intermediaries engaged in the act of providing a platform for lawyers to publish their information to connect with litigants and the public and to solicit work from them is clearly against principles of professional conduct as mentioned under BCI Rules.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021;

33. Rule 3(1)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 reads that an intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a Court of competent jurisdiction or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence relating to the above,



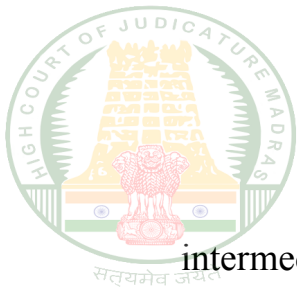
or any information which is prohibited under any law for the time being in force.

Section 79 of the Information Technology Act, 2000;

34. The liability of intermediaries is discussed under section 79 of the IT Act. Intermediary is defined under section 2(w) of the IT Act as follows:

“intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.”

35. The online intermediaries are attempting to seek protection under the safe harbour clause of Section 79 under the Information Technology Act. Section 79(1) indicates that the exemption from liability of intermediaries in certain cases are subject to the provisions of Sub sections (2) and (3) of Section 79. The broad contours of Section 79(1) lays down that the



intermediary shall not be liable for any third party information or data or communication link made available or hosted by him. And this is subject to the conditions stipulated under Sub-Section (2) of Section 79.

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36. Section 79(2)(c) denotes that the intermediary shall claim the umbrella of protection under Sub-Section (1) provided the intermediaries observe Due Diligence while discharging his duties under the Information Technology Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

37. Section 79(3)(a) enumerates that the protection extended to intermediaries under Sub-Section 1 of Section 79 shall not apply if the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in commission of the unlawful act.

38. The learned Senior Counsel appearing on behalf of the 5th respondent would submit that the 5th respondent is providing only Directory services as permissible under the BCI Rules. On scrutiny of documents, this Court found that the contention of the learned Senior Counsel for the 5th respondent is not wholly correct.

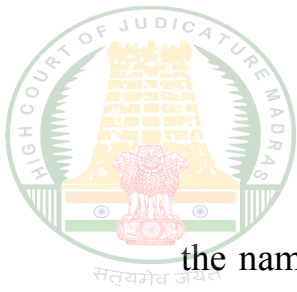


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39. The petitioner in his typed set of papers has produced details of the mode adopted by the respondents for solicitation of lawyer services. The 5th respondent website opens with a search tab and on entering the text of Legal opinion services, the user is directed to a new tab listing out the names of lawyers and their details which is strictly not in consonance with the details allowed to be published by the Bar Council of India under Proviso to Rule 36. There are ratings given against each listed Advocates name. This clearly falls under the ambit of selling lawyers services for a price. Further the user also receives a message from the enlisted lawyers soliciting work through text messages and these messages are hosted through the 5th respondent website.

40. The 5th respondent has involved in soliciting works by adopting several procedures. They are not only grading the lawyers, but they are also providing a platform to connect with the potential clients after unlawfully assessing their requirements. All such content published in online platforms are unlawful and ought to be removed.

41. The Directory services approved by the Bar Council of India is that



the names of the Advocates along with the permissible details as mentioned in Rule 36 alone can be published. Any deviation from the said Rule or expanding the scope of the Directory services by parallelly creating a platform of connection for soliciting work between lawyers and litigants are unlawful under the Bar Council of India Rules.

42. The factual matrix indicates that the lawyers are registering their names by paying charges with the online website companies. Such companies are aiding and inducing to solicit works from the litigants and connecting them with the lawyers. This is clearly an action of “tout” as mentioned in Rule 36.

43. Section 35 of the Advocates Act, 1961 deals with conduct of advocates and Punishment of advocates for misconduct are contemplated. The Bar Council of India under Rule 36 and 37 of Bar Council of India Rules in unequivocal terms prescribes that an advocate shall not solicit work or advertise directly or indirectly. In the present case with the aid and inducement of the online intermediaries, the advocates are enlisted by these companies with a promise that they will provide litigant corridors. The style of functioning and the mode contemplated under these online websites are



self evident that they are promoting and soliciting work for both the lawyers and litigants by getting commissions.

44. Rule 36 of Bar Council of India Rules specifically prohibits touting. Therefore the online websites/intermediaries are estopped from taking shelter under section 79 of the Information Technology Act. The Advocates Act is an Act of Parliament. In exercise of the powers conferred under the Advocates Act, the Bar Council of India has notified the Rules. Since soliciting, advertising directly or indirectly whether by circular, advertisements, touts, personal communication, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with case where he is engaged or concerned are unlawful activities excluded from the safe harbour clause of section 79 of Information Technology Act. Thus, the online website companies are also liable under the relevant Act and Rules.

45. Therefore, in the light of the above, this Court hereby issues the following directions:

- (1) The Bar Council of India/1st respondent is directed to issue Circulars/Instructions/Guidelines to the State Bar Councils to



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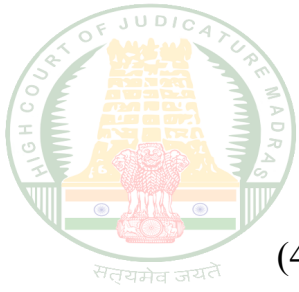


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initiate Disciplinary proceedings for misconduct against the Advocates advertising, soliciting works directly or indirectly, whether by circulars, advertisements, touts, personal communication, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with case where he is engaged or concerned. The Circulars / Instructions are directed to be issued within a period of four (4) weeks from the date of receipt of a copy of this order.

(2) The Bar Council of India is directed to register complaints before the competent authorities under the relevant Act against online service providers/intermediaries conspiring or abetting or aiding or inducing whether by threats or promise or otherwise in the commission of unlawful act of publication of advertisement by lawyers as laid down under Rule 36 of the Bar Council of India Rules.

(3) The Bar Council of India is directed to initiate all appropriate actions to remove the advertisements published by lawyers through online service providers/intermediaries and to issue advises to the intermediaries not to publish such advertisements barred under Rule 36 of Bar Council of India Rules. The Bar Council of India is directed to secure the assistance of Government of India to prevent such unlawful acts by online service providers.



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(4) The respondents 3, 4 and 5 are directed to remove all the contents which are in violation of Rule 36 of BCI Rules within a period of four (4) weeks from the date of receipt of a copy of the Order.

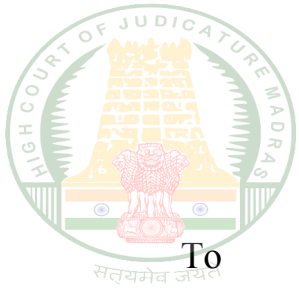
46. With the above said directions, this Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

Registry of Madras High Court is directed to list the matter before this Bench on 20th August, 2024, under the caption “For Reporting Compliance”.

[S.M.S., J.] [C.K., J.]
03.07.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

Note: Registry is directed to list the matter before this Bench on 20.08.2024, under the caption “For Reporting Compliance”.



W.P.No.31281 of 2019

To

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1.The Chairman and Members of the Bar Council,
The Bar Council of India, 21, Rouse Avenue,
Institutional Area, New Delhi,
Delhi 110 002.

2.The Chairman and Members of the Bar Council,
The Bar Council of Tamil Nadu and Puducherry,
Gate No.4, High Court Campus, Chennai,
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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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03.07.2024