W.P(MD)No.16274 of 2020

N.KIRUBAKARAN,J.
AND
B.PUGALENDHI,J.

ORDER

(Order of the Court was made by **N.KIRUBAKARAN,J.**)

"**There cannot be any Mandamus to Parliament or Legislature to enact a law or to make amendment of a statute**",

is the settled position of law. It is based on the principle enunciated in the Constitution that there should be a separation of powers between the three wings of the State, namely, Executive, Legislature and Judiciary. However, the response shown by the other Wings to the suggestions made by judiciary regarding the important issues for enactment of suitable laws pointing out the absence of law as on date or the necessity to make new laws or to amend the existing Acts, is not positive and the suggestions made by the constitutional Courts are not considered by the legislatures very seriously and acted upon.

2. The history would tell that the suggestions given by the Honourable Supreme Court and various High Courts have been consistently ignored by the respective Governments. It seems that the orders giving suggestions to the respective Governments, either are not properly considered or not properly brought to the notice of the policy makers, so that, the decision could be taken for enactment of law as pointed out by the Courts. It seems that there is no

proper Wing in every Department of the Government to note the suggestions/directions given by the Courts and bring them to the notice of the policy makers. Therefore, there is a necessity to have such a Wing in every Department.

3. For example, the Honourable Supreme Court in ***V.Sudeer v. Bar Council of India*** reported in ***AIR 1999 SC 1167***, struck down the Bar Council of India Training Rules, 1995, as amended by the Resolution of the Bar Council of India, dated 19.07.1978, to give training to the entrants of the legal profession as ultra vires as the Bar Council of India does not have the rule making power under the Advocates Act, 1961 and only the Parliament alone can amend the Advocates Act, 1961. However, in the judgment dated 12.03.1999, the Honourable Supreme Court insisted upon the necessity to bring an amendment to the Advocates Act, 1961 by the Central Government to re-enact the provision for training of the law graduates or its necessity for the professionals to control the deterioration of the standards of the legal profession. It is relevant to extract hereunder the following paragraphs of the above judgment:

> *"Unfortunately the same was omitted later on in the Act by amendment and this has been the second major factor responsible for the deterioration of standards in the legal*

profession. Now that the Bar Council of India is wanting the reintroduction of Section 28(2)(b) by Parliament for training the Law Graduates for a period and for conducting the Bar Council Examination, the Central Government must soon re-enact the provision. But the new section must say that the method of training and the Examination must be such as may be prescribed by the Chief Justice of India after considering the views of the Bar Council of India. As this matter pertains to entry into the legal profession for practice in Courts, the final authority in this behalf must be with the Chief Justice of India but after obtaining the views of the Bar Council of India. .....

.... In these circumstances, appropriate statutory power has to be entrusted to the Bar Council of India so that it can monitor the enrolment exercise undertaken by the State Bar Council concerned in a uniform manner. It is possible to visualise that if power to prescribe pre-enrolment training and examination is conferred only on the State Bar Councils, then it may happen that one State Bar Council may impose such pre-enrolment training while another Bar Council may not and then it would be easy for the prospective professional who has got requisite law degree to get enrolment as the advocate from the State Bar Council which has not imposed such pre-enrolment training and having got the enrolment he may start practice in any other Court in India being legally entitled to practise as per the Act. To avoid such an incongruous situation which may result in legal evasion of the laudable

concept of pre-enrolment training, it is absolutely necessary to entrust the Bar Council of India with appropriate statutory power to enable it to prescribe and provide for all India basis pre-enrolment training of advocates as well as requisite apprenticeship to make them efficient and well informed officers of the Court so as to achieve better administration of justice. We, therefore, strongly recommend appropriate amendments to be made in the Act in this connection."

4. Though the Honourable Supreme Court struck down the Apprenticeship Rule, it opined that it was introduced only to enhance the quality of the legal profession and the legal training is necessary and the Parliament should make an amendment in the Advocates Act, 1961.

5. Though the said judgment was passed on 12.03.1999 and a copy of which was directed to be marked to the Chairman, Law Commission of India, the Secretary to Government, Ministry of Law and Justice, Government of India, for appropriate action, till date, even after passing of two decades, namely, 21 years, the Government is not bothered to bring an amendment to the Advocates Act, 1961, to have apprenticeship.

6. When the Honourable Supreme Court felt in the said judgment that the necessity to have Apprenticeship, namely, training for the law graduates before enrolment, for lack of power on the part of the Bar Council of India, the

Honourable Supreme Court technically struck down the resolution. The Honourable Supreme Court though found that there was a lack of power on the part of the Bar Council of India, it could have given a direction validating the Apprenticeship Rules under Article 142 of the Constitution of India. However, it refrained from exercising the power under Article 142 of the Constitution of India with a fond hope that the Parliament would bring the necessary amendment in the Advocates Act, 1961. The expectation of the Honourable Supreme Court has not been fulfilled.

7. Similarly, the Honourable Supreme Court has given a judgment in ***Vishaka and others v. State of Rajasthan reported in AIR 1997 SC 3011***, to enact a law to prevent sexual harassment to women at work place and the relevant portion of the judgment reads as under:

> *"In view of the above, and the absence of enacted law to provide fro the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places,* ***we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose****. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated*

as the law declared by this Court under Article 141 of the Constitution."

8. Even though the said judgment came to be passed in the year 1997, only after 14 or 15 years only, the Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

9. The above examples would also prove that either the Parliament or the State Legislature is not taking up the suggestions/directions of the Constitutinal Courts seriously. Similarly, more number of cases/decisions could be quoted, wherein the Constitutional Courts have suggested for bringing the new Act or to bring suitable amendments in the various existing Acts and till date, they have not been done.

10. One such case pointing out defaulting of the Central Government to enact a law as suggested by the Hon'ble Apex Court, has come before this Court seeking a writ of Mandamus directing the respondents to propose a comprehensive legislation in the field of 'Torts and State Liability' as per the directions of the Honourable Supreme Court in ***MCD v. Uphaar Tragedy Victims Association*** reported in ***(2011) 14 Supreme Court Cases 481*** and ***Vadodara Municipal Corporation v. Purshottam V.Murjani and others***

reported in ***(2014) 16 Supreme Court Cases 14***, in accordance with law within the time stipulated by this Court.

11. It is pointed out that there is no legislation in the field of 'Torts and State Liability' in India. Though the recommendations have been made by the Law Commission to the Union Government for a comprehensive legislation in the field of 'Torts and State Liability' as early as in the year 1965-1967, except introduction of some Bill in 1965-1967, nothing came out as an Act. The Law Commission as early as in the year 1956 submitted its report insisting upon to have a legislation relating to State Liability. So far, the legislation is yet to come. The Honourable Supreme Court time and again has been insisting upon the necessity to have a comprehensive legislation in the above subjects.

12. In ***MCD v. Uphaar Tragedy Victims Association*** reported in ***(2011) 14 Supreme Court Cases 481*** and ***Vadodara Municipal Corporation v. Purshottam V.Murjani and others*** reported in ***(2014) 16 Supreme Court Cases 14***, the Honourable Supreme Court reiterated the need for a comprehensive legislation in the field of 'Torts and State Liability'. Paragraph 17 of the judgment in ***Vadodara Municipal Corporation v. Purshottam V.Murjani and others*** (cited supra), reads as follows:

"17. We do not find any ground to exonerate the Corporation. Admittedly, the activity in question was covered by the statutory duty of the Corporation under Sections 62, 63 and 66 of the Bombay Provincial Municipal Corporation Act, 1949. Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities particularly when there are express stipulations in the contract entered into with the contractor. The Corporation was not only discharging its statutory duties but also was acting as service provider to the passengers through its agent. The Corporation had a duty of care, when activity of plying boat is inherently dangerous and there is clear forseeability of such occurrence unless precautions are taken like providing life saving jackets."

13. Moreover, it is pointed out that the tenure of Chairman of the 21st Law Commission already came to an end and 22nd Law Commission of India was constituted by Notification, dated 21.02.2020. However, so far the Chairman and Members have not been appointed. The non-appointment of the Chairman and Members of the Law Commission of India which is like an Advisory Board, for a long time, will affect the progress of the law making process in the country.

14. In view of the above, this Court, *suo motu*, impleads,

(i) Union of India, represented by its Secretary, Ministry of Parliamentary Affairs, New Delhi;

(ii) The State of Tamil Nadu, represented by its Chief Secretary, Secretariat, Chennai; and

(iii) The Secretary to Government, Government of Tamil Nadu, Law Department, Secretariat, Chennai,

as the respondents 4 to 6. Registry is directed to carry out necessary amendments in the cause title.

15. Mrs.Victoria Gowri, learned Assistant Solicitor General of India takes notice on behalf of the newly impleaded fourth respondent and Mr.M.Muthugeethaiyan, learned Special Government Pleader takes notice for the newly impleaded respondents 5 and 6.

16. Considering the facts and circumstances of the case, the following queries are raised:

(a) In how many judgments, the Constitutional Courts have recommended for enactment of new laws or amendments of the existing Acts, so far?

(b) How many orders have been acted upon and suitable Acts/Rules and amendments to the existing Acts, have been done so far and what are all

the new Acts/Rules and the amendments made so far?

(c) How many judgments are being acted upon and suitable Acts/Amendments are in the process of enactment?

(d) When will the Parliament will bring a comprehensive suitable legislation in the field of 'Torts and State Liability' for violation of fundamental rights of the citizens at the hands of the State and its officials?

(e) Whether the Central and State Governments are having appropriate Wings to note down the judgments/orders of the Constitutional Courts, wherein suggestions for enacting new Acts or amendments have been enacted/proposed or recommended?

(f) If there is no such Wing, when such Wing will be established to bring those suggestions to the higher-ups or policy makers to act upon suggestions given by Courts?

(g) When does the Central Government appoint Chairman and Members of 22nd Law Commission of India?

17. The above queries shall be answered by the respondents in the next date of hearing.

18. List the matter on **10.12.2020** in the motion list.

Index : Yes/No **(N.K.K.,J.)** **(B.P.,J.)**
Internet : Yes/No **01.12.2020**
RSB/SJ

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

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AND
B.PUGALENDHI,J.

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