

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 3282 of 2015 (I)

PETITIONER:

**K.P.DANDAPANI, SENIOR ADVOCATE,
HIGH COURT OF KERALA, RESIDING AT THRUPTHI,
T.D ROAD NORTH END, ERNAKULAM,
KOCHI-682 035**

**BY SRI.KURIAN GEORGE KANNANTHANAM,SENIOR ADVOCATE
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN**

RESPONDENTS:

- 1. BAR COUNCIL OF KERALA,
REPRESENTED BY ITS SECRETARY, BAR COUNCIL BHAVAN,
HIGH COURT CAMPUS, ERNAKULAM, KOCHI-682 031**
- 2. SRI T.H.ABDUL AZEEZ,CHAIRMAN,
BAR COUNCIL OF KERALA, COUNCIL BHAVAN,
HIGH COURT CAMPUS, KOCHI-31**
- 3. THE SECRETARY,
BAR COUNCIL OF KERALA, BAR COUNCIL BHAVAN,
HIGH COURT CAMPUS, KOCHI-31**
- 4. SRI.J.S AJITH KUMAR,
ANANTHAPURI, DIVINE NAGAR, CHITTOOR,
CHERNALLOOR VILLAGE, ERNAKULAM DISTRICT.**

**R1 & R3 BY SRI.GRASHIOUS KURIAKOSE,SENIOR ADVOCATE
ADV. SRI.T.T.RAKESH**

R4 BY SRI.J.S.AJITH KUMAR (PARTY-IN-PERSON)

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No. 3282 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF THE NEWS ITEM REPORTED IN DESABHIMANI DAILY DTD 29/1/2015**
- P2:- TRUE COPY OF THE NOTICE BEARING NO.KBC/CP-9-15/15 DTD 21/1/2015 ISSUED BY THE 3RD RESPONDENT**
- P3:- TRUE COPY OF THE COMPLAINT DTD NIL, REFERRED TO IN EXHIBIT P2 WHICH WAS RECEIVED ALONG WITH EXHIBIT P2**
- P4:- TRUE COPY OF THE JUDGMENT DTD 12/1/2015 IN R.P. 19/2015**

RESPONDENT(S)' EXHIBITS

- R1(A): COPY OF THE RESOLUTION NO.307/2003 OF BAR COUNCIL OF KERALA DATED 19/08/2003**
- R1(B): COPY OF THE RESOLUTIONS NO.58/2000 AND 2/2001 DATED 19/08/2000 AND 21/01/2001 RESPECTIVELY**
- R4(A): COPY OF THE RESOLUTION NO.307/2003 DATED 19/8/2003 OF THE BAR COUNCIL OF KERALA.**
- R4(B): COPY OF THE COMPLAINT SUBMITTED BY THIS RESPONDENT TO THE HONOURABLE GOVERNOR OF KERALA AND ITS ENCLOSURE**
- R4(C): COPY OF THE COMPLAINT/ REPRESENTATION DATED 5/2/2015 OF THE PETITIONER ADDRESSED TO THE CHIEF JUSTICE OF KERALA AND OTHER JUDGES THROUGH SPEED POST.**
- R4(D): COPY OF THE COMPLAINT SUBMITTED BEFORE THE BAR COUNCIL OF KERALA DATED 5/2/2015 WITHOUT ANNEXURES.**

/TRUE COPY/

P.A.TO.JUDGE

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P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.3282 of 2015

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Dated this the 18th day of February, 2015

JUDGMENT

The grievance of the petitioner, who happens to be the Advocate General of Kerala, is mainly with regard to the power and authority displayed by the 3rd respondent in having issued Ext.P2 notice dated 21.01.2015, with an intent to proceed with Ext.P3 complaint preferred by the 4th respondent, raising various allegations attributing professional misconduct on the part of the petitioner, his wife and a son, who are also members of the Bar.

2. The contents of Ext.P3 complaint are sought to be rebutted by the petitioner, pointing out that, absolutely no instance of any 'misconduct' has been committed by the petitioner and that the alleged instances will not give rise to any cause of action for proceeding with further steps. The assertion made by the petitioner in the writ petition is that, the power and authority as per the relevant provisions of the Bar Council Rules, exclusively lie with the 1st respondent Bar Council and that the matter ought to have been placed for consideration before the Bar Council, before issuance of Ext.P2 notice. By virtue of the

mandate of Section 35(1) of the Advocates Act and the relevant rules framed by the Bar Council, the second or third respondents are nowhere in the picture and hence initiation of the proceedings is per se wrong and illegal in all respects.

3. According to the petitioner, if the complaint preferred by the aggrieved party is in order, it has necessarily to be placed before the Bar Council for appropriate decision/action. Before referring the matter to the disciplinary committee, it is for the Bar Council to require the opposite party to furnish particulars/clarification/remarks, if any. Such a function, which is within the prerogative of the Bar Council, is not delegated to anybody else and as such, the power exercised by the 3rd respondent in having issued Ext.P2 notice to the petitioner is beyond jurisdiction and hence the challenge. Referring to the merits involved, the petitioner has also raised a plea of 'mala fides' in different extent and degrees and has sought for immediate interference of this Court, stating that the attempt of the 4th respondent is only to malign the name and goodwill of the petitioner.

4. A counter affidavit has been filed by the 4th respondent seeking to sustain the insinuations levelled against the petitioner and the circumstances which led to prefer Ext.P3 complaint before the Bar Council. Copies of the relevant documents are produced as Exhibits R4(a) to R4(d).

5. The respondents 1 and 3 have filed a counter affidavit seeking to make their position clear. It is stated that, at no point of time had the 3rd respondent sought to trespass into the powers vested with the Bar Council and that the remarks sought for from the petitioner, on receipt of Ext.P3 complaint, was as per the practice and procedure, particularly on the basis of relevant resolutions taken by the Bar Council in this regard. It was on the basis of such resolutions that the 2nd respondent, who was the Chairman of the Bar Council, ordered to call for remarks of the petitioner and this made the 3rd respondent to have issued Ext.P2. It is pointed out that, the remarks were sought to be obtained without examining the merits of the complaint at all and this was only to enable the Bar Council to have the matter dealt with properly, with reference to all the relevant materials, before considering whether the matter could be/should be

proceeded against, by referring it to the disciplinary authority or whether the Council could drop the proceedings.

6. With regard to the authority exercised by the 2nd and 3rd respondents, reference is made to Rule 8 of the Bar Council of Kerala Rules, stipulating the duties of the Chairman, who shall exercise a general control and supervision of all the matters of the Bar Council. It is stated that, as per **Resolution No.307/03 dated 19.08.2003**, it was resolved that, in the case of all regular complaints, the Secretary was to be authorised to call for remarks and rejoinder by the order of the Council and place the complaint, remarks and rejoinder to the Council. There was some modifications with regard to the course and events as per **Resolution No.2/2001 dated 21/01/2001**. The matter came to be considered further, and as per **Resolution No.307/03 dated 19.08.2003**, it was resolved that all complaints regarding disciplinary jurisdiction shall be placed before the Chairman, before the remarks are called for and those complaints, of which the Chairman is of the view that further proceedings need not be taken, such complaints could be placed before the Council, with effect from 19.08.2003. It is stated that, it was only as per the

orders passed by the 2nd respondent/ the then Chairman, that Ext.P2 notice was issued by the 3rd respondent to the petitioner, seeking for the remarks, without examining any merit of the complaint. It is also mentioned that, on receipt of the remarks, the same will be passed on to be placed before the Council, adding that the course sought to be pursued by calling for remarks by the 3rd respondent is not mandatory or obligatory for the petitioner herein and that even if the petitioner does not opt to offer the remarks, the complaint could be placed before the Council, to be proceed with, in accordance with law.

7. Heard Mr.Kurian George Kannanthanam, the learned Senior Counsel on behalf of the petitioner and Shri.Grashious Kuriakose, the learned Senior Counsel appearing for the Bar Council of Kerala and the party-in-person, in so far as the 4th respondent is concerned.

8. In view of the fact that the Bar Council has already made the position clear, to the effect that the merit of the complaint has not been looked into or is intended to be examined at the time of calling for the remarks, this Court does not find it necessary to deal with the merit of the case at all. In view of the

stand made clear by the respondent/Bar Council in unequivocal terms, that Ext.P3 complaint could be caused to be placed before the Council for consideration and further steps, the third respondent is directed to place Ext.P3 before the 1st respondent Bar Council. It shall be for the Bar Council to deal with the complaint and pursue further steps, if necessary, strictly in accordance with the relevant provisions of law.

No opinion is expressed with regard to the merits of the case. The writ petition is disposed of accordingly.

**P.R.RAMACHANDRA MENON,
JUDGE**

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