

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

W.P.No.5834 of 2015

Mr.R.Prabhakaran ... Petitioner

Vs.

1.The Secretary
Bar Council of Tamil Nadu
Bar Council Office
High Court Campus
Chennai - 600 104

2. The Registrar
Bar Council of Tamil Nadu
Bar Council Office
High Court Campus
Chennai - 600 104

3. M/s.Kocon India Limited
Rep. By its Authorised Representative
N.M.Sridhar
No.820/15, Kuthambakkam Village
Poonamalee Taluk
Chennai - 600 124

... Respondents

Writ petition filed under Article 226 of the Constitution of India for a Writ of Certiorari calling for the entire records relating to the proceedings of Confl.No.52 of 2015 in D.C.C.No.43 of 2014 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.R.Prabhakaran
Petitioner-in-Person

For Respondents : Mr.S.Y.Masood
for R1 and R2

ORDER

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

The petitioner who is a practising advocate has come up with the above writ petition challenging a notice of enquiry issued by the Disciplinary Committee of the Bar Council of Tamil Nadu.

2. Heard Mr.R.Prabhakaran, petitioner appearing in person.

3. It appears that the petitioner and the firm of lawyers of which he was the Managing Partner were handling a lot of cases for a company by name M/s. Kocon India Limited, having office at Poonamallee. According to the petitioner, his client wanted him to adopt unfair practices and therefore, a rift arose between them. According to the petitioner, the rift led the client to lodge a complaint with the Bar Council of Tamil Nadu and Puducherry on 19.08.2013.

4. The Bar Council sent a copy of the complaint and the petitioner submitted a detailed reply on 22.10.2013. After examining the complaint and the reply, the Bar Council passed Resolution No.259 of 2014 dated 07.11.2014, holding that there is prima facie reason to believe the allegation of professional misconduct and that therefore the complaint should be referred to the Disciplinary Committee.

5. In pursuance of the said resolution, the Disciplinary Committee issued a notice dated 27.01.2015 calling upon the petitioner to appear for an enquiry. Challenging the said notice, the petitioner has come up with the above writ petition.

6. The petitioner who appeared in person strenuously contended that the complainant before the Bar Council is a Multinational Company who pressurised the petitioner to adopt unfair and corrupt practices and that since he refused to do so, they had lodged a complaint with malafide reasons. It is also his contention that after issuing a legal notice dated 19.11.2013, the petitioner handed over the case bundles along with consent for change of vakalat on 26.12.2013. A copy of the letter dated 26.12.2013, sent by the firm of lawyers of which the petitioner is a partner, containing an acknowledgement that the representative of the complainant company had received all the documents had also been placed before us. Inviting our attention to the code of conduct framed by the Bar Council with particular reference to the portion where a lawyer is ordained not to indulge in unfair practices, but to uphold the highest ethical standards, it is contended by the petitioner that the dispute arose only because of the insistence of the client to resort to the breach of the obligation that a lawyer has to the Court under Chapter II of Bar Council of India Rules.

7. We have considered the above submissions.

8. At the outset, the question as to whether the complainant before the Bar Council pressurized the petitioner to indulge in unfair professional conduct or unethical conduct is a matter of evidence. We cannot exercise any jurisdiction under Article 226 of Constitution of India to take evidence on questions of fact and preempt an enquiry by the Bar Council. Therefore, unless the petitioner shows that there is a jurisdictional error on the part of the respondent in taking cognizance of the complaint, it is not possible to entertain the writ petition at the stage of notice of enquiry.

9. On the issue as to how the bundles have been returned, it is seen from the very records produced by the petitioner that his client lodged a complaint with the Bar Council on 19.08.2013. The notice issued by the petitioner was on 19.11.2013 and the receipt of the documents by the client was on 26.12.2013. Therefore, the circumstances under which these events had taken place are also matters of evidence and appreciation of evidence by the Disciplinary Committee.

10. Whenever a person comes up before the Court challenging the very initiation of an enquiry, he can succeed either by showing that there was a jurisdictional error or that the allegations per se, if even accepted, would not tantamount to a professional or other misconduct. In the absence of any of these two parameters, it is not possible for this Court to entertain the writ petition at this stage.

11. Unfortunately, the allegation that the petitioner has made against the former client cannot be enquired into by the Bar Council and any action taken against that party. Such allegations can be seen by the Bar Council in the context of the complaint made by the client, for the purpose of ascertaining whether there were malafides and whether there was any substance in the complaint at all. Therefore, we are of the considered view that the petitioner should urge all these points before the Disciplinary Committee. At this stage it is not possible to interfere with the matter. Therefore, leaving it open to the petitioner to raise all these points before the Disciplinary Committee, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

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1 cc to Mr/s.R.Prabhakaran ,Advocate, SR.No.15583/2015

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