

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:26.02.2016 & Pronounced on: 21.3.2016

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.499 to 502, 791, 792 & 2521 of 2016

K.Sathyabal	..	Petitioner in WP No.499/16
R.Y.George Williams	..	Petitioner in WP No.500/16
R.Prasadh	..	Petitioner in WP No.501/16
U.Rajarajan	..	Petitioner in WP No.502/16
L.Infant Dinesh	..	Petitioner in WP No.791/16
V.Kayalvizhi	..	Petitioner in WP No.792/16
A.Abdul Rahman	..	Petitioner in WP No.2521/16

Vs.

1. Bar Council of Tamil Nadu and Puducherry
rep. by its Secretary
High Court Campus
Chennai 600 104.
2. D.Selvam
Chairman
Bar Council of Tamil Nadu and Puducherry
High Court Campus
Chennai 600 104.
3. Bar Council of India
rep. by its Secretary
21, Rouse Avenue Institutional Area
Near Bal Bhawan
New Delhi 110 002.

4. Mannan Kumar Misra
Chairman
Bar Council of India
21, Rouse Avenue Institutional Area
Near Bal Bhawan
New Delhi 110 002.

5. Karnataka State Bar Council
Secretary
Old K.G.I.D. Building
Dr. Ambedkar Veedhi
Bangalore 560 001.

Respondents in
.. all W.Ps.

Petitions under Article 226 of The Constitution of India praying for a Writ of Declaration to declare that the order in R.O.C.No.3587/15 dated 26.11.2015 passed by the 2nd respondent in the name of the 1st respondent read with the order dated 22.11.2015 issued by the 4th respondent as communicated by the 3rd respondent vide Letter No.BCI:D:5383/2015 (Council) dated 23.11.2015 as illegal and unconstitutional and consequently set aside the order dated 31.12.2015 passed by the 4th respondent as communicated by the 3rd respondent Letter No.BCI/D/6011/2015 read with letter CONFDL.No.2436 of 2015 dated 02.01.2016 dated 31.12.2015 and the other proceedings thereon.

For Petitioners in WP

Nos.499 to 502/16 : Ms.R.Vaigai
791 & 792/16 : Mr.K.M.Ramesh
2521/16 : Mr.T.Velumani for
R.C.Paul Kanagaraj

For Respondent-1 : Mr.R.Singaravelan
For Respondent-2 : Mr.Vijay Narayan, S.C.
For Mr.S.Y.Masood
For Respondent-3 : Mr.S.R.Rajagopal
For Respondent-4 : Service awaited
For Respondent-5 : Service awaited

WEB COPY
COMMON ORDER

V.RAMASUBRAMANIAN, J

The petitioners have come up with the above writ petitions challenging (i) an order issued by the Chairman of the Bar Council of Tamil Nadu and Puducherry, prohibiting them from practising as Advocates in any Court until the conclusion of the

disciplinary proceedings and also (ii) the initiation of disciplinary proceedings.

2. We have heard Ms.R.Vaigai, learned counsel appearing for the petitioners in four writ petitions, Mr.K.M.Ramesh, learned counsel appearing for the petitioners in two writ petitions and Mr.T.Velumani, learned counsel appearing for the petitioner in the seventh writ petition. We have also heard Mr.R.Singaravelan, learned counsel appearing for the first respondent State Bar Council, Mr.Vijay Narayan, learned Senior Counsel appearing for the second respondent and Mr.S.R.Rajagopal, learned counsel appearing for the third respondent.

3. On 20.11.2015, a Senior Commandant of the CISF gave a complaint in writing to the Registrar General of this Court. As per the complaint, the petitioners herein as well as two other Advocates by name M/s. Muthuramalingam and Antony indulged in unruly conduct, intimidation, obstruction, wrongful restraint of the CISF personnel, destruction of public property using unparliamentary and filthy language. By a separate communication dated 20.11.2015, the Senior Commandant of the CISF submitted before the Registrar General, a copy of the complaint given by a lady Sub Inspector belonging to the CISF by name Rati Verma.

4. Simultaneously, a complaint was also lodged at the instance of the Senior Commandant, with the Flower Bazaar Police, in Crime No.32 of 2015, for alleged offences under Sections 143, 186, 188, 189, 294, 341, 353, 506(i), 509, IPC read with Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, against all the petitioners herein and the other two advocates.

5. On 22.11.2015, the Chairman of the Bar Council of India, who is the fourth respondent herein, passed an order directing the Tamil Nadu Bar Council to take stringent action against the petitioners as well as two other advocates. He directed the Bar Council of Tamil Nadu to initiate disciplinary proceedings and to conclude the same within eight weeks. This order was communicated by the Joint Secretary of the Bar Council of India to the Secretary of the Bar Council of Tamil Nadu on 23.11.2015.

6. Simultaneously, the Registrar-General of this Court also sent a letter dated 24.11.2015 to the Chairman of the State Bar Council, forwarding the complaint given by the lady Sub Inspector of Police.

7. Pursuant to the above, the Chairman of the Bar Council of Tamil Nadu, who is impleaded by name as the second respondent in these writ petitions, passed an order prohibiting the petitioners herein from practising as advocates in any Court of law, either in their names or in any assumed names pending disposal of the disciplinary proceedings. Thereafter, the

petitioners herein received a notice dated 07.12.2015 from the Registrar of the Disciplinary Committee of the Bar Council, calling upon the petitioners to appear for an enquiry before the Disciplinary Committee on 12.12.2015.

8. It appears that the petitioners appeared before the Disciplinary Committee of the State Bar Council on 12.12.2015. Before the Disciplinary Committee, the petitioners filed applications seeking revocation of the prohibition imposed upon them. It appears that these applications were numbered as interlocutory applications and they were taken up by the Disciplinary Committee for hearing and were also heard. But, suddenly, one Member of the three Member Disciplinary Committee resigned his membership on 30.12.2015. Therefore, the applications were postponed to 02.01.2016.

9. In the meantime, the Chairman of the Bar Council of India passed an order dated 31.12.2015 transferring the enquiry from the file of the Disciplinary Committee of the Bar Council of Tamil Nadu to the Disciplinary Committee of the Bar Council of Karnataka at Bangalore. As a consequence, the hearing scheduled to take place on 02.01.2016 got postponed and the cases were transferred to the Disciplinary Committee of the Bar Council of Karnataka. After the aforesaid development, all the petitioners came up with the above writ petitions. The relief sought in all the writ petitions are almost identical. It is for a declaration that the prohibitory order dated 26.11.2015, issued by the Chairman of the State Bar Council in the name of the Bar Council, was illegal and unconstitutional and to grant all consequential reliefs.

10. These writ petitions were initially posted before another Division Bench. Before the said Division Bench, the petitioners seem to have offered to file and in fact filed, individual affidavits, assuring without admitting, to the misconduct complained of, that they will not be a party to any incident that may recur in future. Subsequently, the writ petitions got posted before us as specially ordered cases.

11. A careful look at the prayer made in all the writ petitions would show that the challenge made in these writ petitions is primarily to two orders, namely (i) an order dated 26.11.2015 prohibiting the petitioners from practising in any Court pending disciplinary proceedings, and (ii) an order dated 31.12.2015 passed by the Chairman of the Bar Council of India transferring the disciplinary proceedings from Tamil Nadu to Karnataka. The challenge to the prohibitory order as well as to the order transferring the disciplinary proceedings to Karnataka are primarily on the following grounds:

(i) that the power to initiate disciplinary proceedings and to prohibit a person from practising in any Court vest only with the State Bar Council and hence, the same cannot be exercised by the Chairman individually;

(ii) that in any case, the Chairman of the State Bar Council has acted in this case, under extraneous pressure, namely to the dictates of the Chairman of the Bar Council of India;

(iii) that the Bar Council of India has only a limited role to play in the matter of initiation of disciplinary proceedings against persons, who are on the rolls of a State Bar Council;

(iv) the Chairman of the Bar Council of India does not have power to withdraw the disciplinary proceedings pending before the Disciplinary Committee of the State Bar Council and to transfer the same to the Disciplinary Committee of the Bar Council of another State; and

(v) that in any case, there must be some proportionality to a punishment imposed upon the professionals, especially since an interim prohibitory order passed against a professional cannot be equated to the suspension of a Government servant or a worker.

12. However, the State Bar Council, the Bar Council of India as well as the Chairmen of the respective Councils, who are the respondents herein oppose the writ petitions on the following grounds namely:

(a) that the petitioners have a statutory alternative remedy and hence the writ petitions are not maintainable;

(b) that the petitioners have submitted to the jurisdiction of the Disciplinary Committee of the Karnataka Bar Council and hence, they cannot now raise the question of competence or jurisdiction; and

(c) that in any case, the order of suspension passed by the Chairman of the State Bar Council has been ratified by a majority of the elected members of the State Bar Council and hence, the same cannot any more be identified as an independent decision taken by the Chairman of the State Bar Council.

13. We have carefully considered the above submissions. Preliminary Issue (revolving around the purported order of the Disciplinary Committee dated 30.12.2015):

14. Before we proceed to deal with the submissions made on either side, we are obliged to take note of one fact and we are also obliged to deal with one preliminary issue raised by Mr.T.Velumani, learned counsel appearing for the petitioner in W.P.No.2521 of 2016.

15. At the outset, it was made clear by Mr.T.Velumani, learned counsel for the petitioner in W.P.No.2521 of 2016, that his client is not pursuing a challenge either to the disciplinary proceedings or to the transfer of the proceedings from the Tamil Nadu Bar Council to Karnataka Bar Council. This petitioner has confined his challenge only to the interim

prohibitory order restraining him from practising in any court. But, this will not absolve us from dealing with the challenge to the initiation of disciplinary proceedings and their transfer to Karnataka, since all the other six writ petitioners seek to pursue the challenge.

16. One issue raised by Mr.T.Velumani, learned counsel is that a three Member Committee constituted by the Bar Council of Tamilnadu heard arguments on the applications for stay filed by all the suspended advocates on 19.12.2015 and reserved orders. The orders were expected to be pronounced on 30.12.2015. But on that date, one Member of the Committee namely Mr.K.Rajaraman submitted a letter of resignation on the ground that the Chairman of the Disciplinary Committee passed an order allowing the applications for stay and insisted upon him to sign it and that therefore he was not willing to continue to be a Member of the Disciplinary Committee. In the light of the contents of the letter dated 30.12.2015 submitted by Mr.K.Rajaraman, Member of the Disciplinary Committee, it is contended by Mr.Velumani, learned counsel, that the order passed by the Disciplinary Committee on 30.12.2015 should be given effect to, as it was an order passed by majority.

17. But the above contention of the learned counsel for the petitioner in W.P.No.2521 of 2016 is liable to be rejected outright. The so called order dated 30.12.2015 said to have been passed by the Chairman of the Disciplinary Committee of the State Bar Council, is no order in the eye of law for the following reasons:

(i) Once one member of a three Member Committee resigns his Membership before pronouncing a verdict, the Committee becomes a truncated one. Unless the Committee is reconstituted and an order passed, either by a majority or by unanimity, a draft of the order, even if made ready, cannot be treated as an order in the eye of law.

(ii) Moreover, the contention of Mr.T.Velumani, learned counsel emanates from a statement contained in the letter of resignation dated 30.12.2015 submitted by Mr.K.Rajaraman, which reads as follows:

"At this juncture, the Chairman of the Disciplinary Committee-I has passed the order by allowing the petition and insisting me to sign in the said order".

But, this statement does not indicate that the third member of the Committee was in agreement with the Chairman. There is nothing in the letter of resignation of Mr.K.Rajaraman to indicate that two out of three members of the Committee were in

ad idem, on the nature of the order to be pronounced. Therefore, the very claim that by a majority, the Disciplinary Committee had allowed the applications for stay, is only presumptuous.

(iii) Moreover, the circumstances surrounding the resignation of Mr.K.Rajaraman are shocking. As per the letter dated 30.12.2015 sent by the Senior Commandant of the CISF to the Registrar General of this Court, which was, in turn, forwarded by the Registrar General to the State Bar Council, an attempt was made by the members of the noble profession, to influence and pressurise the Members of the Disciplinary Committee and the same led to the resignation of Mr.K.Rajaraman. Therefore, without holding an enquiry into the serious allegations contained in the letter of the Commandant of the CISF, it is not possible to accept that there was any order valid in the eye of law.

18. It is possible for the writ petitioners to contend that without holding an enquiry into such a serious allegation made by the CISF, the proceedings ought not to have been transferred to the Karnataka State Bar Council. But, the failure to hold an enquiry on this aspect, in our considered view, could have enured only to the benefit of the writ petitioners and not to the State Bar Council. In the first instance, the holding of an enquiry on this aspect would have stalled further proceedings, prolonging the agony of the petitioners. Secondly, if the outcome of the enquiry, by any chance, had substantiated the allegation made by the CISF, the writ petitioners would have been worse off. Suppose the outcome of the enquiry discredited the allegation made by the CISF, even then the petitioners could have only got the proceedings retained before the State Bar Council, but could not have made the truncated committee to pronounce an order that had no validity in the eye of law. Therefore, the contention that an order allowing the applications for stay had been passed on 30.12.2015 and that the benefit of the same should be made available to the writ petitioners, does not stand to reason. Hence, it is rejected.

Main contentions:

19. As we have pointed out in para 11 above, the main contentions revolve around (i) the powers of the Chairmen of the State and National Bar Councils, (ii) the power of the Bar Council of India either to initiate action or to transfer proceedings and (iii) the question of proportionality.

20. Apart from taking us through the various provisions of the Advocates Act and the Rules framed by the Bar Council of India, Ms.R.Vaigai, learned counsel for some of the petitioners, invited our attention to a number of decisions. The list of those citations and the principles of law sought to be deduced therefrom can be stated briefly and simply as follows:

(1) Bar Council of Maharashtra v. M.V.Dabholkar [1975 (2) SCC 602], is relied upon to show that the initiation of the proceedings and the assignment of the same to the Disciplinary Committee should be by the Bar Council of a State.

(2) Swatantar Dixit v. Govind Ram [2001 (10) SCC 761], is relied upon to drive home the point of proportionality of penalty.

(3) Dr.Kuntesh Gupta v. Management of Hindu Kanya Maha Vidyalaya, Sitapur (U.P) [1987 (4) SCC 525], is relied upon to show that an order, which is basically null and void, can be challenged under Article 226 despite the availability of an alternative remedy.

(4) Jagmittar Sain Bhagat v. Director, Health Services, Haryana [2013 (10) SCC 136], is relied upon to show that conferment of jurisdiction is a Legislative function and that acquiescence by a party cannot be taken to confer jurisdiction by consent, upon a body, which lacks jurisdiction inherently.

(5) Zuari Cement Limited v. Regional Director, Employee's State Insurance Corporation [2015 (7) SCC 690] is relied upon in support of the contention that the participation by a party in the proceedings before a forum that lacks jurisdiction, will not confer jurisdiction upon the forum.

(6) Kanwar Singh Saini v. High Court of Delhi [2012 (4) SCC 307], is relied upon again to show that jurisdiction cannot be conferred either by consent of parties or even by a superior court.

(7) Bar Council of Maharashtra & Goa v. Manubhai Paragji Vashi [2012(1) SCC 314], is relied upon to show that if a rule is not within the competence of the State Bar Council, the approval of the rule by the Bar Council of India will not make it valid.

(8) Institute of Chartered Accountant v. L.K.Ratna [1986 (4) SCC 537], is relied upon to show that a post-decisional hearing is not a substitute for a pre-decisional hearing and that a pre-decisional hearing is the sine qua non for the valid exercise of a power, except in cases of mandatory statutory exclusion. This decision is also relied upon in support of the contention that when a power to find and record that a member is guilty of misconduct is specifically entrusted to the entire Council (such as the Bar Council or the Council of the Institute of Chartered Accountants), the decision should be that of the entire Council and not that of a few individuals.

(9) Pancham Chand v. State of Himachal Pradesh [2008 (7) SCC 117], is relied upon to show that statutory authorities are bound to act in terms of the authority conferred upon them and cannot act de hors the statutory provisions.

(10) Dipak Babaria v. State of Gujarat [2014 (3) SCC 502], is relied upon to show that an appellate authority cannot be converted into an original authority and the power to give general directions cannot be construed as a power to give directions in individual cases.

(11) Supreme Court Bar Association v. Union of India [1998 (4) SCC 409], is relied upon to show that even in a case where an advocate was held guilty of criminal contempt of court, it was held by the Supreme Court that the power to punish an advocate for professional or other misconduct, laid only with the Bar Council and not even with the Supreme Court of India.

(12) State of Bihar v. Jainandan Prasad Singh [1989 (Supp) (2) SCC 544], is relied upon to show that unless there is a rule to the contrary, it is not possible for the members of a Committee, merely to sign and acknowledge a decision already taken by someone. There must be a meeting of minds of the members of the Committee, without which, the signatures affixed by them on a paper containing the decision of someone, is of no value.

(13) Marathwada University v. Seshrao Balwant Rao Chavan [1989 (3) SCC 132], is relied upon to show that the principles relating to ratification, as applicable in the context of the law of agency, would not have any application to the exercise of powers conferred under statutory provisions.

(14) Babu Verghese v. Bar Council of Kerala [1999 (3) SCC 422], is relied upon to show that the respondents cannot even fall back upon Rule 6 of the Bar Council of India Rules, so as to make this case one of confirmation. Unless an action had been taken in accordance with the Rules by circulation of papers to all members and getting the concurrence of the majority, the post-facto confirmation is of no consequence.

(15) R.D.Vijay Anand v. The Secretary, The Bar Council of Tamil Nadu and Puducherry [2014 (1) CTC 204], is relied upon to show that though the power to revoke the licence to practice law or to suspend the licence for a prescribed period, would also include the power to suspend practice pending disciplinary proceedings, such a power is an exceptional one, which can be invoked only in rarest of rare cases.

(16) Manikandan Vathan Chettiar v. Bar Council of Tamil Nadu [2015 (6) CTC 460], is relied upon to show the same principle as laid down in R.D.Vijay Anand.

(17) Nandlal Khodidas Barot v. Bar Council of Gujarat [1980 (Supp.) SCC 318], is relied upon to show that before referring a complaint to the Disciplinary Committee, the Bar Council should apply its mind to the allegations and get satisfied about the existence of prima facie case.

(18) Narayanan Sankaran Moos v. The State of Kerala [1974(1) SCC 68], is relied upon to show that when it is required that there must be collective consideration by a body, telephonic consultation by all the members of the body at one and the same time is out of question. (But with the advancement of technology, the rationale behind this decision, is not beyond any pale of doubt).

(19) L & T Mc Neil LTD v. Government of Tamil Nadu [2001 (3) SCC 170], is relied upon to show that consultation does not mean concurrence, but relevant factors should be taken into consideration.

(20) State of Madhya Pradesh v. Sanjay Nagayach [2013 (7) SCC 25], is relied upon to show what constitutes consultation and also to show that where the outcome of the proposed action is serious, the requirement of consultation should be construed to be mandatory.

(21) An Advocate v. Bar Council of India [1989 Supp. (2) SCC 25], is relied upon to show that the disciplinary proceedings before the Bar Council are quasi-criminal in nature and the extreme penalty of debarment is equivalent to death penalty and that therefore, the Committee should be guided by the doctrine of benefit of doubt.

(22) Pinakin Bhailal Amin v. Haresh Manibhai Patel [2001(9) SCC 730], is relied upon to show that any violation of the principles of natural justice will vitiate the proceedings before the Bar Council.

(23) Sahara India, Lucknow v. Commissioner of Income Tax [2008 (14) SCC 151], is relied upon to show that the expression "civil consequences" encompasses infraction of not merely property or personal rights, but of civil liberties, material deprivation and non-pecuniary damages. Anything, which affects a citizen in his civil life, comes under its wide umbrella and hence, before taking any action that will result in civil consequences, the principles of natural justice should be observed. This decision is also relied upon to show that a post-decisional hearing is no substitute for a pre-decisional hearing.

(24) The Income Tax Officer v. Lakmani Mewal Das [1976 (3) SCC 757], is relied upon to show that the expression "reason to believe" connotes not merely a subjective satisfaction, but a reason held in good faith. The reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief.

(25) Alagaapuram R.Mohanraj v. Tamil Nadu Legislative Assembly [Writ Petition (Civil) No.455 of 2015], is relied upon to show that the non-supply of a copy of the video recording, to the Members of the Legislative Assembly, before holding them guilty of breach of privilege, tantamounted to violation of natural justice.

(26) Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295(1)], is relied upon to show that whenever the statute requires an order to be that of the Board, the same must be that of the Board and not of the Chairman. This decision is also relied upon to show that there cannot be excessive delegation.

(27) Indian Council of Legal Aid v. Bar Council of India [1995 (1) SCC 732], is relied upon to show that while enacting the Advocates Act, the Parliament created agencies at the State Level as well as the Central Level and invested them with rule making powers on diverse matters. Therefore, what is placed within the domain of the State Bar Council, can be exercised only by them.

(28) State of Goa v. Babu Thomas [2005 (8) SCC 130], is relied upon to show that once the original order is vitiated by a fundamental error, the same cannot be ratified.

(29) Manohar v. State of Maharashtra [2012 (13) SCC 14], is relied upon to show that when an authority is conferred with the power of taking disciplinary action and imposing penalty, the exercise of such a power is bound to affect a person with civil consequences. Therefore, the provisions have to be construed strictly.

(30) N.Kannadasan v. Ajoy Khose [2009 (7) SCC 1], is relied upon to show that the expression "consultation" may take different meanings in different situations depending upon the nature of the statute.

21. We have carefully considered the submissions on both sides.

22. Before considering the judicial precedents, we are obliged to take note of the provisions of the Advocates Act, 1961, to test the validity of the contentions raised by the petitioners.

Provisions of the Act:

23. Briefly stated, the provisions of the Advocates Act, 1961, can be summarised as follows:

(i) The Act seeks to establish a Bar Council for each of the States as mentioned in Section 3(1) and a Bar Council of India for the entire country under Section 4(1).

(ii) The Act prescribes the constitution of the State Bar Councils and the Bar Council of India, their method of election, tenure of office, disqualifications etc.

(iii) The Act enlists the functions of the State Bar Councils and the Bar Council of India under Sections 6 and 7 respectively.

(iv) The Act contemplates the constitution of several committees, including disciplinary committees by the Bar Councils and the manner of transaction of business by those committees.

(v) Section 15 of the Act empowers the Bar Council to make Rules to carry out the purposes of Chapter-II and Section 28 empowers the State Bar Councils to make Rules to carry out the purposes of Chapter-III. Every High Court is also empowered to make Rules laying down the conditions, subject to which, an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto.

(vi) Chapter-V, though titled as "Conduct of Advocates", contains provisions for punishment of advocates by the State Bar Councils as well as the disciplinary powers of the Bar Council of India.

(vii) Apart from the Rule making powers conferred upon the Bar Council under Section 15 and upon the State Bar Councils under Section 28, the Bar Council of India is also conferred with the general power to make Rules under Section 49.

24. Interestingly, Section 2 of the Act defines the expressions "Bar Council", "Bar Council of India" and "State Bar Council" separately. On a common sense understanding, one may tend to think that there are only two types of Councils namely State Bar Council and Bar Council of India and hence, there is no necessity to define the expression "Bar Council" separately when the other two expressions are defined. But there seems to be a purpose behind the separate use of the expression "Bar Council" and a separate definition provided for the said expression. That it is so, can be understood by looking at some other provisions.

25. Section 10(1) of the Act empowers the State Bar Council to constitute two Standing Committees. Sub-Section (2) of Section 10 empowers the Bar Council of India to constitute two Standing Committees. Sub-Section (3) of Section 10 empowers the State Bar Council and the Bar Council of India, to constitute such other committees as may be necessary, for the purpose of carrying out the provisions of the Act. All the three Sub-

Sections of Section 10 specifically speak about State Bar Council or Bar Council of India.

26. In contrast to Section 10, Section 9(1) which speaks about the constitution of Disciplinary Committees and Section 9A (1), which speaks about the constitution of Legal Aid Committees, use the expression "Bar Council" and not the expressions "State Bar Council" or "Bar Council of India".

27. Thus, the Statute, which uses specific expressions such as "State Bar Council" and "Bar Council of India", while speaking about the constitution of all other committees, uses the expression "Bar Council" while speaking about the constitution of Disciplinary Committees and Legal Aid Committees. Similarly, Section 10A, which speaks about the transaction of business by Bar Councils and the Committees thereof, clearly specifies the places where the Bar Councils as well as all Committees thereof, are to meet. But, when it comes to Disciplinary Committees, an exception is carved out under Sub-Section (5) of Section 10A.

28. Therefore, it is clear that a special role is assigned to the Bar Council (which term includes within its purview, the Bar Council of India as well as the State Bar Council), in so far as disciplinary matters are concerned. As we have pointed out earlier, the expression "Bar Council" is defined separately in Section 2(d) and Section 9(1), dealing with the constitution of Disciplinary Committees, uses the expression "Bar Council" and not the expressions "State Bar Council" or "Bar Council of India" which are separately defined in Sub-Sections (m) and (e) respectively of Section 2.

29. Section 15 which confers rule making power upon the Bar Council, also uses only the expression "Bar Council". Clause (i) of Sub-Section (2) of Section 15 deals with the constitution and functions of any Committee of the Bar Council and the term of office of members of any such Committee.

30. Therefore, the power conferred upon the State Bar Council, under Section 35, to punish advocates for misconduct, cannot be viewed in isolation from the scheme of Sections 9, 9A, 10, 10A(5) and 15 (2) (i) read with Section 2(1) (d), (e) and (m) of the Act.

31. Interestingly, the caption given to Section 35 reads as "Punishment of Advocates for Misconduct". But, the caption given to Section 36 reads as "Disciplinary Powers of Bar Council of India". Therefore, the scheme of Section 35 cannot be taken to curtail the disciplinary powers of the Bar Council of India.

32. One argument advanced by Ms.R.Vaigai, learned counsel for the writ petitioners is (i) that under Sub-Section (2) of Section 36, it is only the Disciplinary Committee of the Bar Council of India, which can withdraw a proceeding pending before the Disciplinary Committee of a State Bar Council and (ii) that even such withdrawal can only be to its own self, but not to the Disciplinary Committee of any other State Bar Council.

33. The said argument is not well founded. The Disciplinary Committee of a Bar Council is a creature of the Bar Council, as seen from the scheme of Section 9(1) read with Section 10. As we have pointed out earlier, the power of constitution of Disciplinary Committees is vested under Section 9(1) upon "Bar Council", though the power of constitution of all other committees is vested under Section 10, specifically upon "The State Bar Council" or "The Bar Council of India".

34. What a creature can do, can always be done by its creator. If the Disciplinary Committee is a creature of the Bar Council, what such a Disciplinary Committee can do, can always be done by the Bar Council. Therefore, the power conferred upon the Disciplinary Committee of the Bar Council of India under Section 36(2) can always be exercised by the Bar Council of India itself. Sub-Section (2) of Section 36 does not curtail the plenary powers of the Bar Council of India to exercise disciplinary control over the members of the legal profession. The decision of the Constitution Bench of the Supreme Court in Vinay Chandra Misra, is a recognition of such a plenary power and hence, the transfer of the proceedings to the Karnataka State Bar Council, can hardly be taken exception to.

35. The contention that the Chairman of the State Bar Council could not have acted to the dictates of the Chairman of the Bar Council of India and that therefore, the order is vitiated as one passed on extraneous considerations, does not also merit acceptance. Section 48-B (1) empowers the Bar Council of India to give directions to the State Bar Council or any Committee thereof. Interestingly, Section 48-B (1) is not actually the source of power for the Bar Council of India. It, in fact, recognises the existence of a general power of supervision and control for the Bar Council of India over the State Bar Councils. The very language of Section 48-B (1) makes this very clear. It reads as follows:

"48-B. Power to give directions - (1) For the proper and efficient discharge of the functions of a State Bar Council or any committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be

necessary, and the State Bar Council or the committee shall comply with such directions.

(2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions, to the ex officio member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council."

36. The use of the phrase "in the exercise of its powers of general supervision and control", in Sub-Section (1) of Section 48-B and the use of the phrase "without prejudice to the generality of the foregoing power" in Sub-Section (2), confirm our conclusion that the Bar Council of India has plenary powers and that the above provisions merely recognise the existence of such a power.

37. The contention that the Chairman of the State Bar Council took a decision on his own and got the signatures of a few members, post-facto and that therefore, the decision was not that of the Bar Council, also does not merit acceptance. On facts, the order of the Chairman of the State Bar Council dated 26.11.2015 contains an averment to the effect that he had sent all connected papers to the elected members through e-mail as well as courier service and that majority of the members concurred with the Chairman. There are 25 members of the State Bar Council, out of whom, one had resigned. Only two members have supported the cause of the writ petitioners. A total of 17 members have signed the proceedings. The paper book filed by the petitioners themselves contains a letter dated 24.11.2015 sent by the Secretary to the Bar Council of Tamil Nadu to all the elected members, enclosing a copy of the order dated 22.11.2015 of the Bar Council of India. The printout of the e-mail sent by the Secretary is also enclosed. Therefore, the contention as though the other members acted as mere rubber stamps, on a decision taken unilaterally by the Chairman, does not appear to be factually correct.

38. As a matter of fact, the Chairman of the State Bar Council has been impleaded by name as a party to the writ petitions. The Bar Council of Tamil Nadu is also a party to the writ petitions. Both have engaged different counsel and separate counter affidavits have been filed. The counter filed by the Bar Council of Tamil Nadu, supports the orders impugned in these writ petitions. If the impugned orders did not have the support of the majority of the elected members, the State Bar Council, which is declared to be a body corporate under Section 5 of the Act, could not have defended the impugned action.

39. Arguments were advanced on both sides about the effect of confirmation and ratification. But, we do not think that we need to go into the said question. Once we find on facts that the order of the Bar Council of India dated 22.11.2015 was circulated by the Secretary of the State Bar Council by a mail dated 24.11.2015 and that it was only thereafter that the Chairman of the State Bar Council passed the order dated 26.11.2015, on which the signatures of at least 17 members had been obtained, the entire decision should be taken to be that of the Council and not that of the Chairman.

40. One important contention raised on the side of the respondents is that the petitioners had submitted to the jurisdiction of the Disciplinary Committee and that therefore, they cannot question the initiation of proceedings. This argument is sought to be repelled by the petitioners on the ground that if the original action is completely contrary to law, the question of acquiescence will not arise.

41. But we have already found that the initiation of action was not contrary to law. Once this is clear, the action of the writ petitioners in filing applications for stay before the Disciplinary Committee and almost snatching an order on 30.12.2015 would certainly amount to acquiescence. As we have pointed out earlier, at least one of the writ petitioners wanted to take advantage of the purported order passed on 30.12.2015. Assuming that one Member of the Committee had not resigned on 30.12.2015 and the Committee had granted a stay of the order of suspension, all the writ petitioners would have happily enjoyed the benefit of the stay, without questioning the competence or jurisdiction and without terming the original action as illegal. Therefore, the plea of acquiescence set up by the respondents cannot be very lightly rejected.

42. Therefore, in fine, we find that all the legal contentions raised on the side of the petitioners are liable to be rejected. Neither the initiation of proceedings nor the issue of a prohibitory order preventing the writ petitioners from practising in any court nor the transfer of the proceedings to the Disciplinary Committee of the Karnataka State Bar Council can be taken exception to.

43. In any case, two principles of law are well founded. Extraordinary situations demand extraordinary remedies. This is the first principle. The second principle is that the remedy available in a writ petition under Article 226, is a discretionary one and the grant of relief to a writ petitioner, does not depend entirely upon the establishment of a legal right. The Court can always refuse to grant relief to a petitioner, despite the existence of valid grounds, if it is satisfied that the exercise of discretion to grant relief, is not warranted in the facts and circumstances of the case.

44. We are compelled to record the above for the simple reason that the situation in this Court had gone completely out of control and the very functioning of this Court and the Subordinate Courts in the State of Tamil Nadu, had come to depend upon the mercy of a few groups of lawyers. Interestingly, the associations do not have any control over such groups of lawyers and the present as well as future prospective office bearers had to depend upon such groups of lawyers for their continuance in office. For the first time in the past about ten years, all the courts in the State of Tamil Nadu had functioned without a day's boycott, from 16.9.2015 till 7.3.2016. This became possible only because of the proactive role played by the Chairmen of the Bar Council of India and the Bar Council of the State of Tamil Nadu as well as a majority of the elected members of both Bar Councils. Knowing fully well that they are the elected members and knowing fully well that any action taken against a group of lawyers will make them unpopular, jeopardising their future prospects, the Chairmen of both Bar Councils, have initiated prompt action to put the system back on the rails.

45. This is in contrast to the manner, in which, one elected member of the State Bar Council, who also happens to be the Chairman of the Federation of Associations of Advocates of the State of Tamil Nadu, meekly surrendered to the demand made by a handful of lawyers and issued a boycott call on 7.3.2016.

46. One argument raised on the side of the petitioners deserves consideration. After playing the compact disc containing the video recording of what happened on 22.11.2015 that led to the suspension of these lawyers, it was contended by the learned counsel for the petitioners that these petitioners did not create any mischief. On the other hand, there were other lawyers, who picked up a quarrel with the CISF personnel deliberately with a view to create trouble. According to the petitioners, these lawyers, who are found in the compact disc to be creating trouble, have not been suspended. The petitioners also pointed out that the lawyers, who staged a demonstration in front of the Chief Justice's house, have also not been suspended.

47. Though the above contention is well founded, we do not think that the same can persuade us to set aside the order of suspension. But, we leave it to the Bar Council to take action even against the other lawyers, who are seen in the video recording and also against those lawyers who staged a demonstration in front of the Chief Justice's house, leading to the registration of a criminal complaint.

48. Apart from the legal grounds, on which, the petitioners have challenged the impugned action of the Bar Council, the petitioners have also raised two factual issues and we are obliged to consider the same. The first factual issue raised by the petitioners is that none of them ever opposed the deployment of the CISF in the campus, but that they only took exception to a videograph particularly of women lawyers, taken by non-uniformed men of the CISF. Inviting our attention to the distinction between to videographing and the installation of CCTVs and also inviting our attention to the International Norms regarding CCTVs, Ms.R.Vaigai, learned counsel for the petitioners made elaborate submissions to drive home the point that what was done by the CISF was wrong and the questioning of the same cannot be taken to be a misconduct, warranting disciplinary action. The second factual issue relates to what each of the writ petitioners independently did or did not do.

49. The first factual issue raised by the petitioners cannot be gone into at this stage, since the disciplinary proceedings initiated on certain factual basis, are now pending before the Committee. Therefore, any attempt now made to get into factual details, may jeopardise the interests of one party or the other. In any case, even if some lawyers found something done by the CISF to be not palatable to them, they ought to have complained to the Registrar-General, instead of indulging in direct action. The complaint before the Bar Council is not just about a few lawyers picking up a wordy dual with the CISF personnel. The specific complaint is that the booth set up by the CISF for frisking and screening, was destroyed. If this is true, then this is completely unacceptable, even if we assume for the sake of argument that some non-uniformed men videographed advocates. Therefore, we are not impressed with the first factual issue.

50. On the second factual issue, each of the writ petitioners has something to say. Appearing for the petitioner by name Ms.Kayalvizhi, it was contended by Mr.K.M.Ramesh, learned counsel that she was implicated on a mistaken identity. It appears that there is another lawyer by name Kayalvizhi, against whom, several complaints are pending. According to the learned counsel, the petitioner - Kayalvizhi returned to practice only recently after delivering a baby and that she has been mistaken to be her namesake, merely because she happened to give a bite to a television channel, which was interviewing some lawyers. Similarly, it was submitted by Mr.K.M.Ramesh, learned counsel that one of the writ petitioners by name Mr.Infant Ganesh, has a family problem. His father is no more and his mother is afflicted by cancer. Therefore, the learned counsel contended that the suffering already undergone by them should be treated as enough and more.

51. Though, in view of the pendency of the disciplinary proceedings, we cannot actually decide a factual issue, we can certainly take note of one important thing. After the Bar Council of India and the State Bar Council took action against a number of lawyers, some amount of discipline has been restored. One good thing that has turned out of the entire episode, is that the lawyers, who preferred to issue boycott calls at the drop of the hat, have chosen to take recourse to legal remedies, when it came to their own suspension from practice. If this wisdom had dawned upon them, when the disease afflicting the legal fraternity was at its initial stages, the same could have been cured with some bitter pills. Since it did not happen, the disease of boycotting courts and confronting the Judiciary, reached its advanced stage, where surgical procedure alone became the only solution. We do not know if we are at a stage where amputation of some limbs is warranted. We know that the Bar Council is more equipped to assess the stage of the disease and decide (i) which are the cases where the suspended lawyers have already suffered enough, (ii) which are the cases requiring some more treatment and (iii) which are the cases where amputation may be necessary.

52. Having dealt with the legal and factual issues raised by the writ petitioners, let us now take up for consideration an appeal made by the learned counsel for the petitioners, about the suffering already undergone by the writ petitioners. The petitioners herein were suspended from practice, by the prohibitory orders issued by the Chairman of the State Bar Council on 26.11.2015. As of now, a period of more than about 100 days has passed and the professional lives of the writ petitioners have been thrown out of gear. When these writ petitions came up for hearing before another Bench, the Bench appears to have permitted the writ petitioners to file affidavits expressing regret for whatever has happened. The petitioners also filed affidavits. But, the respondents pointed out that the affidavits did not contain unqualified and unconditional expressions of regret. But, when the writ petitions came up before us, it was pointed out by Ms.R.Vaigai, learned counsel for the petitioners that considering the nature of the complaint pending before the Disciplinary Committee, it would not be possible for the petitioners to plead guilty and tender apology, as the same may tantamount to admission of guilt of a professional or other misconduct.

53. The above appeal made by the learned counsel for the petitioners, in our considered view, merits qualified acceptance. The petitioners have suffered interim prohibitory orders for more than 100 days. They have filed affidavits, assuring that the lawful functioning of the CISF in the High court will not be disturbed by any act on their part, which may cause interference with the smooth functioning of the

administration of justice. But, what tantamount to the lawful functioning of the CISF and what does not, cannot be decided by the writ petitioners. As of now, the very functioning of the CISF in the High Court is lawful, as it was allowed pursuant to the orders of this Court as confirmed by the Supreme Court. Therefore, neither the petitioners nor any other Advocate can interfere with the functioning of the CISF in the High Court.

54. As we have indicated above, the cases of lawyers (both in Chennai and Madurai), who are under suspension due to various incidents that have happened in the past, fall under three different categories, namely (a) those, the misconduct alleged against whom is somewhat palatable that the suffering already undergone by them is sufficient for the revocation of interim suspension, (b) those, whose cases for revocation of interim suspension can wait for some more time in view of the nature of the allegations for which they are facing an enquiry, and (c) those who are facing enquiry into very serious allegations, which warrants the continuation of the suspension until the disciplinary proceedings are concluded.

55. We would not have brought on record the distinction between the above three categories of cases, but for the fact that the suspended lawyers and their friends (though constituting a miniscule minority) have also started building up pressure upon the State Bar Council through some of the elected representatives (and even otherwise). Fortunately, the State Bar Council has not so far succumbed to such pressure despite a couple of its own elected members, trying to arm twist the Bar Council. We hope the Bar Council will take note of this above categorisation and ward off all attempts at destabilisation.

56. Having made the above very clear, we find that the cases of the writ petitioners before us belong to the first category. Therefore, we are of the considered view that a limited positive direction could be issued to the Bar Council to revoke the suspension of the petitioners in these writ petitions, even while making it clear (i) that this order cannot be applied blindfold to all others under suspension (ii) that we are not interfering with the disciplinary proceedings pending before the Karnataka State Bar Council and (iii) that we have not found fault either with the Chairmen of the respective Bar Councils or with the State Bar Council and the Bar Council of India, both with regard to the suspension and initiation of proceedings and with regard to the transfer of the proceedings to the State of Karnataka.

57. Therefore, even while upholding all the actions of the Chairmen of the State Bar Council and the Bar Council of India and the action of the respective Bar Councils (i) in issuing interim prohibitory orders (ii) in initiating disciplinary proceedings and (iii) in transferring the proceedings, we

dispose of the writ petitions, directing the State Bar Council to take a sympathetic view and revoke the interim prohibitory orders issued against the writ petitioners herein, without prejudice to the pending disciplinary proceedings. The State Bar Council shall pass orders of revocation, within one week of receipt of a copy of this order. We make it clear that this order will cover only the cases of the writ petitioners before us and not others, who have not chosen to come to Court. The State Bar Council shall take note of the observations contained in paragraphs 54 and 55 above. The petitioners are directed to co-operate in the early disposal of the disciplinary proceedings. Any attempt to protract the proceedings may be viewed as an effort to take undue advantage of this order. There will be no order as to costs.

After we pronounced orders, a request was made on behalf of the writ petitioners that the petitioners will co-operate in the early conclusion of the proceedings and that the Disciplinary Committee of the Karnataka Bar Council may be directed to complete the enquiry and pass final orders within a time frame.

2. Therefore, a direction is issued to the fifth respondent to request the Disciplinary Committee to complete the enquiry and pass final orders within a period of six weeks from the date of receipt of a copy of this order.

21.03.2016

-s/d-

Assistant Registrar(CSIII)

dt:22/03/2016

True Copy

Sub-Assistant Registrar

kpl/gr/RS

To

1. The Secretary, Bar Council of Tamil Nadu and Puducherry
High Court Campus, Chennai 600 104.
2. The Secretary, Bar Council of India,
21, Rouse Avenue Institutional Area
Near Bal Bhawan, New Delhi 110 002.

3. The Secretary, Karnataka State Bar Council,
Old K.G.I.D. Building
Dr. Ambedkar Veedhi, Bangalore 560 001.

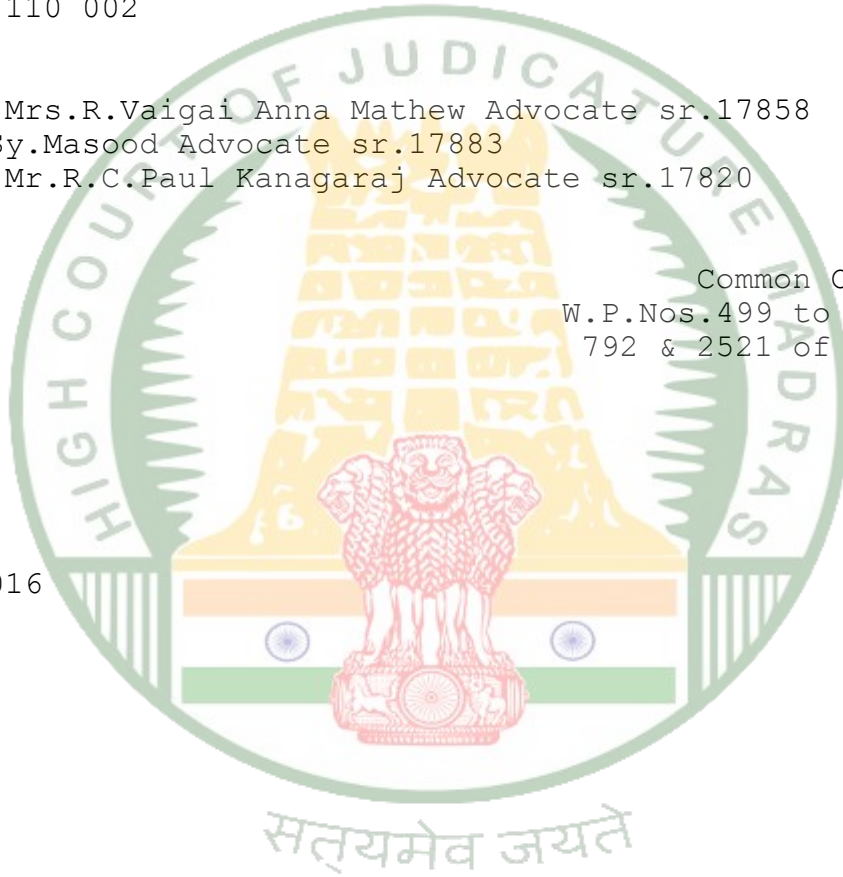
4.The Chairman
bar Council of TamilNadu and Puducherry
High Court Campus, chennai-600 104

5.The Chairman
Bar Council of India,
NO.21, Rouse Avenue Institutional Area
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+8 ccs to Mrs.R.Vaigai Anna Mathew Advocate sr.17858
+1 cc Mr.Sy.Masood Advocate sr.17883
+2 ccs to Mr.R.C.Paul Kanagaraj Advocate sr.17820

Common Order in
W.P.Nos.499 to 502, 791,
792 & 2521 of 2016.

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aa22/03/2016



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