

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.12421 of 2007

ORDER:

This Writ Petition, filed under Article 226 of the Constitution of India, challenges the order, dated 20.01.2007, passed by the Bar Council of India-first respondent herein.

Heard Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the petitioner, Ms.S.Nanda, learned counsel for the respondent No.1 and Sri Pratap Narayana Sanghi, learned counsel for the third respondent, apart from perusing the material available before the Court.

According to the petitioner he is a practising Advocate in Civil Courts and the High Court of Judicature since 1968. The third respondent herein filed a complaint before the second respondent, vide Complaint Case No.71 of 1999, against the petitioner herein. The second respondent, by way of an order dated 05.11.1999, rejected the said Complaint Case. As against the said rejection of the Complaint Case, the third respondent herein filed a Revision before the Bar Council of India-first respondent herein under Section 48A of the Advocates Act, 1961 (for brevity, 'the Act'). The first respondent, by way of an order dated 20.01.2007, remanded the matter to the State Bar Council with a direction to dispose of the matter afresh. The said order passed by the Bar Council of India-first respondent herein is under challenge in the present Writ Petition.

It is contended by Sri Vedula Venkata Ramana, learned Senior Counsel, that the order under challenge is highly illegal, arbitrary and is violative of the principles of natural justice and opposed the very spirit and object of the provisions of the Act and the Rules made thereunder. In elaboration of the said contention, it is further submitted by the learned Senior Counsel that, while passing the impugned order, the first respondent had completely given a go-bye to Section 48A of the Act and Part-II of Chapter IX of the Bar Council of India Rules.

On the other hand, it is submitted by the learned counsel for the respondents that there is no illegality nor there exists any procedural infirmity in the impugned action and, as such, the order under challenge is not amenable for any judicial review under Article 226 of the Constitution of India.

In the above background, the issue that emerges for consideration by this Court in the present Writ Petition is-

“Whether the impugned order dated 20.01.2007 passed by the Bar Council of India-first respondent is sustainable and tenable and whether the same warrants any interference of this Court under Article 226 of the Constitution of India”?

Reiterating the averments in the affidavit, filed in support of the Writ Petition, it is the categorical contention of the learned Senior Counsel appearing for the petitioner that, without issuing any notice and without giving any opportunity of being heard to the petitioner, the first respondent herein passed the questioned order, as such, the said order is liable to be set aside. It is also

submitted by the learned Senior Counsel that the impugned order passed by the first respondent is hit by the principles of natural justice.

In order to consider the said contentions and the validity of the same, the relevant provisions of the statute are required to be considered. The provisions of law which are germane and relevant for the purpose of resolving the issue in the present Writ Petition are Section 48A of the Act and Part-II of Chapter-IX of the Bar Council of India Rules. The said provisions of law read as under:

Section 48A of the Advocates' Act, 1961:

“Power of Revision:- 1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.
2) No order which prejudicially affects any person shall be passed under this Section without giving him a reasonable opportunity of being heard”.

Part-II of Chapter-IX of the Bar Council of India Rules:

(1) An application for revision shall be in the form of a petition duly signed setting out the necessary facts, and shall be accompanied by the copy of the order in respect of which the revision is filed, giving the address of the petitioner and the respondent or respondents. It shall be supported by affidavit and shall be accompanied by the prescribed fee which is payable in cash or could be sent by M.O. The applicant shall file at least 5 more copies of the petition and affidavit, and if there is more than one respondent as many additional copies as are necessary to serve the other respondents.

He shall file translations in English of such of the papers as may be necessary for reference at the time of hearing.

(2) No application for revision shall ordinarily be entertained after 90 days from the date of the order complained of.

2. (1) If the revision petition is in order, the papers shall be called for and the Council, or a Committee of the Council constituted or authorised in this behalf, may direct notice to the respondent. The papers shall not however be called for unless so directed by the Council for revision petition against an order of the Disciplinary Committee.

(2) If the Council or the Committee considers that there are no merits in the revision petition, opportunity shall be given to the petitioner to appear before the Council in support of the petition.

3. The Council may, after hearing the petitioner, direct notice to the respondent or dismiss the petition, as it may consider fit.

4. Upon notice being issued under the above rules after giving reasonable opportunity of hearing to the parties, the Council may pass such orders on the revision petition as it deems proper.

5. Unless the Council otherwise specially directs, the petitioner and the respondent may appear by advocates, who shall file a vakalatnama signed by the party.

6. A copy of the order on the revision shall be sent to the parties.

It is very much evident from a reading of the above provisions of law that no order, which affects prejudicially any person, shall be passed by the Bar Council of India without being preceded by the opportunity of being heard. Part-II of Chapter-IX of the Bar Council of India Rules mandates service of notice to the respondents. In the considered opinion of this Court the impugned action is not only in contravention of the above provisions of law but also violative of the principles of natural justice.

During the course of hearing learned Standing Counsel for the respondent No.1 has placed on record the instructions of the Bar Council of India dated 12.06.2007. The said instructions read as under:

“Notice to the petitioner was sent vide notice bearing No.BCI:D:5/2006 dated 29.12.2006. No notice was issued to the respondent as the matter was posted for admission. Petitioner had received the notice on 05.01.2007. Mr.V.Shiv Prasad, Advocate appeared on behalf of the petitioner”.

It is very much apparent from the above instructions that the first respondent passed the impugned order only after giving notice to the third respondent herein but not to the petitioner herein. In view of the above, this Court has absolutely no hesitation to hold that the impugned order is violative of the mandatory provisions of the Act, the Rules made thereunder and also in contravention of the principles of natural justice, as such, the same cannot be sustained by way of law.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the order dated 20.01.2007 passed by the Bar Council of India-first respondent in Revision Petition No.17/2000 and the matter is remanded to the Bar Council of India-first respondent for fresh consideration of the issue, strictly in accordance with law.

As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

19th June,2017
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