

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1084 of 2020

Order Reserved on 29.06.2020

Order Delivered on 17-07-2020

- Satish Chandra Verma, S/o Shri V.S. Verma, aged about 47 years, R/o A-6/11 Shriram Park Colony, Tifra Industrial Park, Bilaspur (CG)

---- Petitioner

Versus

1. State Bar Council of Chhattisgarh Through Secretary, New High Court Premises, Bilaspur, Bodri, Chhattisgarh
2. Kundan Singh Thakur, S/o Hari Singh Thakur, Aged 46 Years R/o House No.3, Near Khalari Mata Mandir, PS City, Kushalpur Chowk, District Raipur (CG)
3. Prabhakar Singh Chandel The Chairman, State Bar Council of Chhattisgarh, H.O. High Court Premises, Bilaspur (CG)

---- Respondents

&

WPC No. 1261 of 2020

- Kundan Singh Thakur, S/o Hari Singh Thakur, Aged 46 Years, R/o House No.3, Near Khallari Mata Mandir, P.S. City, Kushalpur Chouk, District Raipur (CG)

---- Petitioner

Versus

1. The Bar Council of India Through The Secretary, Bar Council of India, 21-Rouse Avenue, Institutional Area, New Delhi - 110 002,
2. State Bar Council of Chhattisgarh, Through Chairman, High Court Campus, Bodri, District Bilaspur Chhattisgarh. 495001
3. The Secretary, State Bar Council of Chhattisgarh, High Court Campus, Bodri, District Bilaspur Chhattisgarh.
4. The State of Chhattisgarh Through The Secretary, Law and Legislative Affairs, Government of Chhattisgarh, Mantralaya, Atal Nagar, New Raipur Chhattisgarh. 492002

5. Satish Chandra Verma, Presently Advocate General, A.G. Office, High Court Premises, Bodri, District: Bilaspur (CG)
6. Vivek Ranjan Tiwari, Presently Additional Advocate General, A.G. Office, High Court Premises, Bodri, District Bilaspur Chhattisgarh. 495001
7. Mateen Siddique, Presently Deputy Advocate General, A.G. Office, High Court Premises, Bodri, District Bilaspur Chhattisgarh. 495001.
8. Ravi Bhagat, Presently Deputy Govt. Advocate, A.G. Office, High Court Premises, Bodri, District Bilaspur (CG) 495001

---- Respondents

WPC No.1084/2020

For Petitioner : Dr. N.K. Shukla, Sr. Advocate with
Shri Shailendra Shukla & Shri Arjit
Tiwari, Advocates

For Respondent No.1 & 3: Dr. Saurabh Pandey, Advocate

For Respondent No.2 : Shri Devershi Thakur, Advocate

WPC No.1261/2020

For Petitioner : Shri Devershi Thakur, Advocate

For Respondent No.1 : Shri Shivang Dubey, Advocate

For Respondent No.2 & 3: Dr. Saurabh Pandey, Advocate

For Respondent No.4 : Shri J. Pali, Dy. Adv. General.

For Respondent No.5 : Dr. N.K. Shukla, Sr. Advocate with
Shri Shailendra Shukla & Shri Arjit
Tiwari, Advocates

Hon'ble Shri Prashant Kumar Mishra, J
Hon'ble Shri Parth Prateem Sahu, J

C A V Order

Per Parth Prateem Sahu, J

1. Since both these petitions arise out of the same issue, they are being decided by this common order. For the convenience, the facts and documents referred to in this order are of WPC No.1084/2020, unless specifically referred to otherwise.

2. On coming to know about initiation of proceedings by respondent No.1 based on the complaint filed by respondent No.2 against the petitioner, who is holding constitutional post of 'Advocate General' of the State of Chhattisgarh, has preferred this petition seeking for quashment of the entire complaint proceeding.

3. Succinct facts of the case leading to filing of this petition are that respondent No.2 filed a complaint before respondent No.1 against the respondent-advocates mentioned therein including the petitioner herein for punishing them for their willful and deliberate misconduct lowering down the dignity of noble profession 'advocacy'. On coming to know about initiation of proceedings by respondent No.1 based on the complaint filed by respondent No.2 against the petitioner, who is holding constitutional post of 'Advocate General' of the State of Chhattisgarh, has preferred this petition praying for following reliefs;-

"10.1. A writ and/or an order in the nature of writ of mandamus restraining the respondent no.1 State Bar Council to not to proceed with the impugned complaint i.e. Annexure P-1 filed by the respondent no.2, for lack of jurisdiction.

10.2. A writ and/or an order in the nature of writ of certiorari do issue quash the entire complaint proceedings initiated by Respondent No.2.

10.3. A writ and/or an order in the nature of writ of mandamus holding that the Rule 12 (a) of Chhattisgarh State Bar Council Rules ultravires to Section 35 of Advocate Act 1961 and rules made thereunder.”

4. Case of the petitioner is that the complaint (Annexure P-1) is filed by respondent No.2 before respondent No.1 against four Law Officers of the office of the Advocate General including the petitioner (Advocate General) named therein that during the course of proceedings in WPIL No.53/2018, parties being Kundan Singh Thakur v. State of CG & ors, (henceforth ‘the PIL’), and during the course of mentioning and filing of review petition challenging the order passed in the PIL, the advocates named in the complaint have committed misconduct. The word ‘misconduct’ is not defined anywhere under the Advocates Act, 1961 (for short ‘the Act of 1961’). Petitioner and other Law Officers are having duty towards the Court, their clients & colleagues and respondent No.2 is nowhere related to the petitioner as also other advocates named in complaint and his status can be at the most of opponent. There is not a single word appearing in the complaint which indicates that any of the Law Officers including the petitioner has violated Para-34 & 35 of the Bar Council of India Rules (for short ‘the BCI Rules’). Allegation of working pattern of the office of

Advocate General, Bilaspur (CG) is not in conformity with the provisions of the Law Department Manual, is not correct as the Law Department Manual is not enforceable in the Court of law or the Bar Council and it is only a guideline prescribed by the Law Department relating to functioning of the office of the Advocate General. Respondent No.2 cannot take any point of violation of manual of Law Department as it will not come within the purview of 'misconduct'. It is for the Advocate General and the State to decide as to what stand is to be taken to protect the interest of the State in a given or particular case. Allegation made against one of the Additional Advocate Generals, by name Shri Vivek Ranjan Tiwari, is unfortunate and with intent to malign his image. Request made by the Additional Advocate General / Deputy Advocate General concerned to the learned counsel for respondent No.2 for appearing before the Court is not on account of gravity of the case but in a general way. Review petition against the order passed in the PIL has been filed by the officers, who are posted in the Secretariat as Secretary etc., and by some retired officers of that class. The State Government has also decided to file review petition and accordingly, the office of the Advocate General has filed review petition which came to be dismissed

by the Court. Placing aforementioned facts, it is pleaded that the Chairman of the State Bar Council is not having any authority under the law to pass any order on the complaint made by respondent No.2, but under the Act of 1961 and the BCI Rules, the authority, which has been prescribed for passing any order on complaint against any advocate is the 'Bar Council'. Rule 12 (a) of the Chhattisgarh State Bar Council, 2004 (for short 'the Rules of 2004') is ultra vires to Section 35 of the Act of 1961 because 'rule making power' of a State Bar Council under the Act of 1961 is only with regard to Chapter II & III, whereas Section 35 is part of Chapter-V of the Act of 1961.

5. Respondent No.1 submitted reply to the writ petition precisely mentioning therein that after receiving complaint, respondent No.1 initiated further proceeding by issuing a show cause notice to the petitioner granting an opportunity to the advocates named in the complaint under the principles of natural justice and not to malign image of petitioner. On receipt of a complaint, the Bar Council is empowered to deal with it in accordance with law. Rule 12 (a) of the Rules of 2004 has been framed in exercise of powers conferred upon the respondent

No.1 under Section 15 (2) (g) of the Act of 1961, which falls under Chapter-II of the Act of 1961, and there is no violation of any of the provisions of the Act of 1961. Rule 12 (a) of the Rules of 2004 starts with saving clause, therefore, it does not provide plenary powers to the Chairman. Rule 12 (a) operates in different field, whereas Section 28 of the Act of 1961 falls under Chapter-III of the Act of 1961. Respondent No.1 being a statutory body is empowered by law to deal with complaint, if any, received by it against any advocate on its roll. Allegation made in the complaint can only be decided after thoroughly going through the procedure set out in the Act of 1961 and further, that there is an alternative remedy available to the petitioner of filing appeal against the order passed by the respondent No.1.

6. Reply filed by respondent No.2 in sum and substance is that it is respondent No.1 who is prescribed as competent authority under Section 35 (1) of the Act of 1961 to proceed against an advocate on its roll upon receipt of a complaint. The words 'by any person interested' are used in Section 35 (1) (A) of the Act of 1961 and in the given facts and circumstances of case, the petitioner cannot take a

defence whether he has committed professional misconduct or not against respondent No.2, who is neither a client nor a colleague. The Bar Council is having jurisdiction to entertain a complaint made by person interested alleging misconduct. The act alleged in the impugned complaint is not related to the advocate presently chaired as 'Advocate General' or Law Officers towards or against opponent, but the conduct of the delinquent advocates towards the Court and the society under the professional ethics. The acts on the part of petitioner and Law Officers named in the complaint gave a message to the general public that the creamy layer and elite class would be governed by different sets of law. The procedure prescribed under the Law Department Manual has not been followed. The Law Department Manual cannot be treated only as a guiding instruction. The petitioner and other law officers have acted contrary to the rules/clauses of Law Department Manual. Deliberate attempt to intimidate & influence was made by the advocates complained which amounts to lowering down the majesty of the Court. Section 15 of the Act of 1961 empowers a State Bar Council to make rules and in exercise of such power, the respondent No.1 has made Rule 12 (a) of the Rules of 2004 and it is not a case of

framing of rules without any jurisdiction or authority of law. Petition has been filed only on apprehension that the petitioner may be proceeded against but the proceeding drawn of issuing notice is in accordance with Rule 2 of Chapter-I under Part VII of the BCI Rules and only comments have been called for. The Court cannot take over the role of statutory body or organ of the State and perform their function.

7. Writ Petition filed by the petitioner came up for hearing on 22.5.2020, in which one of us (Justice Parth Prateem Sahu) was a Member, and on that date, following order was passed:-

“All further proceedings pursuant to Annexure-P/1 complaint preferred by the 2nd Respondent are stayed till the next date of hearing.”

Thereafter, the writ petition was taken up for hearing on 26.5.2020 and following order was passed:-

“.....It is brought to the notice of this Court that the 1st Respondent has filed their reply with regard to the interim relief sought for, virtually referring to relevant rules; adding that there is a provision for appeal and that the proceedings are pre-mature. The 2nd Respondent has also filed the return with regard to the application for interim relief.

Dr. Saurabh Pande, the learned counsel appearing for the 1st Respondent-Bar Council submits that the idea and understanding of the Petitioner as to the scope of the proceedings is wrong and misconceived. It is pointed out that the proceedings have been initiated by the Bar

Council on the basis of Annexure-P/1 complaint preferred by the 2nd Respondent. It is stated as strictly in conformity with the statutory provisions; particularly, Section 35 of the Advocates Act, 1961, the Rule making power of the State Bar Council under Section 15, the authority under Section 6(1)(c) of the Act and also Rule 12(a) of the Chhattisgarh State Bar Council Rules which provides sufficient power to the Chairman of the State Bar Council.

With reference to the sequence of events, the learned counsel submits that, on receipt of the complaint from the 2nd Respondent, the version of the Advocate against whom complaint is raised has been sought for, in conformity with Rule 2 of Chapter I Part VII of the Bar Council of India Rules. It was accordingly, that a show cause notice was issued on 22.05.2020 but subsequently, it came to the notice of Bar Council that this Court had already passed an interim order of stay in the afternoon on the same day, in the above proceedings, pursuant to which all further proceedings have been kept in abeyance. It is also pointed out by the learned counsel that such show cause notice was issued by the 'Secretary' to the Bar Council, as ordered by the Chairman and hence it is quite in order.

Dr. N.K. Shukla, the learned Senior counsel appearing for the Petitioner points out that there is no power or authority either with the Chairman or the Secretary to have issued the notice with reference to the alleged misconduct. By virtue of the mandate under Section 35 (1) of the Advocates Act, 1961, a view/opinion has to be formed by the Bar Council of India by application of mind, especially in view of the use of the terminology as to the 'reason to believe'. It is pointed out that sub-Rule 3 of Rule 1 of Chapter I Part VII clearly mandates that on a complaint being formed in the order, it shall be registered and placed before the Bar Council for such order, as it may deem to pass. This has not been done before issuance of show cause notice and hence it is contended that the entire proceedings are

per se wrong and illegal in all respects. The Rule 1 of Chapter I Part VII clearly stipulates as to course of action on a complaint, as to the inquiry under Section 35 of the Advocates Act, 1961. Sub-Rule (2) of Rule I says that the Secretary of Bar Council may require the complainant to pay the prescribed fees, if not paid and to remove the defects and also call for such other particulars or copies of the complaint or other documents. Thereafter sub-Rule (3) of the very same Rule says that, once the complaint is found to be in order, it shall be registered and placed before the Bar Council for such appropriate orders. This is the task of the Secretary. Once the matter is placed before the Bar Council, it is for the Bar Council to pass appropriate orders to do the needful, so as to tackle the situation.

Coming to the power of the Chairman, to have ordered the Secretary to issue the show cause notice, Dr. Saurabh Pande, the learned counsel for the 1st Respondent relies on Rule 12(a) of the relevant Rule framed in exercise of the power under Section 15 of the Act. Rule 12(a) under Chapter V of the Rules of the State Bar council of Chhattisgarh reads as follows :

“(12) CHAIRMAN

(a) Save as otherwise provided in the Act and/or in the Rules made under the Act, the Chairman shall exercise a general control and supervision over all matters of the Council.”

On going through the said Rule, it is clearly seen that the said Rule starts with a 'rider' to the effect that power to the extent as mentioned therein is given to the Chairman only in cases where such power is not dealt with under the Act and/or in the Rules made under the Act (by virtue of the terminology used as “save as otherwise provided in the Act and/or in the Rules made under the Act”). So in respect of the matter for which separate provision is made either in the Act or the Rules, prima facie the Chairman does not have the power to act upon. That apart, the very same Rule also shows that

such power of the Chairman shall be in respect of the “General Control” and “Supervision”, over all matters of the Council. Normally, 'control' or 'supervision' is in respect of an act which is to be done by somebody else/ by some other authority in terms of the relevant provisions of law. It prima facie does not intent or mean that the power of such authority can be appropriated by the Chairman at the first instance, to deal with the situation. We are not making any concrete opinion on this aspect; but for the mere reference made to consider the nature of dispute, as it may have to be decided after full-fledged hearing both the sides.

Dr. Saurabh Pande, the learned counsel for the 1st Respondent submits that the Chairman had instructed the Secretary to issue show-cause notice, as there is much pressure of work because of large number of pending matters, particularly, in respect of the disciplinary proceedings. An order was passed by the Chairman on 18.06.2019 in this regard to avoid the inordinate delay and to call for the comments. However, whether the Chairman has the power to pass such an order dated 18.06.2019 is also a matter that requires to be examined. Dr. N.K. Shukla, the learned Senior Counsel for the Petitioner points out, that by virtue of the mandate under Section 49(1)(f) of the Advocates Act, 1961, it is for the Bar Council of India to make relevant Rules regarding the disciplinary action; which field is forbidden for any other authority including the Bar Council of the State. As such, no power is vested with the State Bar Council in connection with the disciplinary action, but to follow the Rules formulated by the Bar Council of India in the strict sense.

The submissions made by the 1st Respondent are adopted and sought to be supported by the 2nd Respondent as well. The Respondents are required to complete the pleadings in respect of all the other relevant aspects as well. In the said circumstance, the interim order

passed by this Court on 22.05.2020 stands extended till further orders.

An I.A. has been filed as I.A. No. 02 of 2020 by the Petitioner seeking to have the contempt of Court matter filed by the 2nd Respondent to be tagged along with this matter. The said prayer is sought to be resisted by the Respondents stating that it is in respect of a 'criminal act of contempt' and that too, in relation to the proceedings in the Court on 31.01.2020 and on such other relevant aspects. However, considering the close proximity to the main issue involved in this matter, in connection with the matter which is stated as projected in the contempt matter (reference to which is made in Annexure P/1 complaint preferred by the 2nd Respondent as well) we find it appropriate to list this matter along with the Contempt matter before the appropriate Bench.

I.A. Nos 3 and 4 of 2020

Dr. N.K. Shukla, Senior Counsel submits that I.A. No 03 of 2020 has been filed to bring forth the subsequent developments after moving this Court by filing this writ petition.

Heard.

Allowed.

I.A. 04 of 2020, is an application to implead Shri Prabhakar Singh Chandel, the Chairman, State Bar Council of Chhattisgarh, H.O. High Court Premises, Bilaspur (C.G.) in the personal capacity because of the alleged malafide intention.

Issue notice to the said additional Respondent in the address given as above.

Post this matter in the next week.”

8. Dr. N.K. Shukla, learned Senior Advocate for the petitioner submits that from perusal of the complaint made by respondent No.2 to respondent No.1 it is clear that allegations therein are that the working/ functioning of the office of the Advocate General,

Bilaspur i.e. petitioner and other Law Officers, is not in conformity with the provisions of the Act of 1961 and the BCI Rules. The Advocate General being head of the office has the authority to either appear personally or depute any Law Officer to appear and protect the stand or portrait the grievance of the State before any Court of law. It is submitted that only because some of the officials of the State Government, who were respondents in the PIL, had visited the office of the Advocate General after passing of order by the High Court in the PIL and thereafter a mention has been made before the Court by some of the respondents in the PIL, it cannot be said that petitioner and other Law Officers of the office of Advocate General, Bilaspur have acted in violation of their duties & commitments towards their client. More so, the respondents therein are either holding or retired from high ranking post in the State Government. Referring to Section 35 (1) of the Act of 1961, it is argued that on receipt of a complaint against an advocate or otherwise it is for the State Bar Council to arrive at a conclusion that there is "reason to believe" that any advocate on its roll has been guilty of professional or other misconduct, then only it shall refer the case for disposal to its Disciplinary Committee. Here in this case the

complaint made by respondent No.2 was not placed before the State Bar Council, but the Secretary, Bar Council of Chhattisgarh, has placed it directly before the Chairman (respondent No.3) to proceed with the complaint, who proceeded with the complaint in individual capacity by passing an order of issuance of notice, which was not within his jurisdiction. It is further submitted that the constitution of Bar Council is provided under Section 3 of the Act of 1961 and sub-section (2) (b) of Section 3 provides for holding elections under a system of proportional representation. The Chairman is also one of the members who is elected by the Council to hold the post of Chairman. *It is also pointed out that Part VII, Chapter I of the BCI Rules prescribes for the procedure to be followed by a Bar Council on receipt of a complaint against advocates and as per procedure, the Secretary finding the complaint in order, is required to place it before the Bar Council. However, in case at hand, the Secretary instead of placing the complaint before the Bar Council has placed it before the Chairman, who has no jurisdiction to consider and pass any order on complaint against advocate. Learned Senior Counsel contended that the rule making power of the State Bar Council is envisaged under Section 28 of the Act*

of 1961 for the purpose of that Chapter only under which Section 28 of the Act of 1961 is placed and that is Chapter-III which deals with admission and enrollment of advocate.

Chapter V of the Act of 1961 deals with 'Conduct of Advocate' and Section 35 is placed under Chapter V, therefore, Rule 12 (a) of the Rules of 2004 where from it is said that the Chairman, State Bar Council of Chhattisgarh has invoked jurisdiction and therefore Rule 12 (a) of the Rules of 2004 is ultra vires to Sections 28 & 35 of the Act of 1961.

He submits that respondent No.1 can entertain a complaint only when it discloses commission of any act by an advocate and conduct is against the Rules under Para-34 & 35 of the BCI Rules. The Act of 1961 casts a duty upon advocate towards his client and the Court and nominal duties towards his opponent. There is no allegation of acting contrary to such duty towards the client.

9. Mr. Pande, learned counsel for respondent No.1 submits that Section 35 of the Act of 1961 provides for punishment of advocate for misconduct. Referring to Chapter-I of Part VII of the BCI Rules, which provides for disciplinary proceedings & review, it is argued that the action taken on the complaint of

respondent No.2 is strictly in accordance with the provisions of the Act of 1961 and Chapter I of Part VII of the BCI Rules. He also submits that Rule 1 (2) of the BCI Rules specifically mentions that before referring a complaint to the Disciplinary Committee under Section 35 (1) of the Act of 1961, the Bar Council can also call for comments from the advocate complained against and it is this provision and power which was invoked by the Chairman, State Bar Council of Chhattisgarh. It is also pointed that Part-VII of the BCI Rules deals with the disciplinary proceedings and review, which is formulated under Section 49 (1) (f) of the Act of 1961. The Chairman has exercised his jurisdiction by invoking the power and procedure as provided under Rule 12 (a) (g) of the Rules of 2004 and Part-VII of Chapter-I of the BCI Rules. Rule-A (1) (2) gives power to call for explanation from the advocate against whom complaint is filed before referring complaint to its Disciplinary Committee. He also submits that understanding of the petitioner that action of the Chairman, Bar Council of Chhattisgarh, is without jurisdiction and contrary to law, is misconceived and incorrect.

10.It is contended that other Law Officers named in complaint came with the private respondents to the Court No.3 where private respondents of the PIL have made a mention for hearing of review petition and that too before a Bench which has not passed the order in PIL. The Additional Advocate General during the course of mentioning made a submission that the State is also going to file review petition without there being any such decision taken by the authority under the Law Department Manual. The private respondents against whom this Court has passed the order were permitted to enter into the office of the Advocate General; Shri Vivek Ranjan Tiwari, Additional Advocate General has been purposefully deputed to make a mention before Court Hall No.3 for hearing of review petition. All the above acts come within the purview of "misconduct" under Chapter-V of the Act of 1961. It is also contended that the officers of the Advocate General Office made false statement before the Court.

11.Mr. Thakur, learned counsel for respondent No.2 submits that the petitioner has acted in contravention of the provisions of the Act of 1961 and the BCI Rules. Interaction with opponents' advocate in WPIL No.53/2018 is unbecoming of an advocate and is in

violation of duty casted upon an advocate towards his client. He submits that act of the petitioner amounts to lowering down the dignity and decorum of the institution, therefore, the petitioner & other Law Officers named in the complaint cannot be left to go Scot-free.

He also points out that Section 6 of the Act of 1961 deals with the function of the State Bar Councils and sub-section (c) of Section 6 empowers the State Bar Council to entertain and determine cases of misconduct against the advocate on its roll. The contents of complaint filed by respondent No.2 discloses commission of misconduct under the Act of 1961 and the BCI Rules, therefore, the proceeding drawn thereon cannot be interfered with. In support of aforementioned submissions, learned counsel places his reliance on the judgments of Hon'ble Supreme Court in the matters of Bar Council of Maharashtra vs. M.V. Dabholkar reported in AIR 1976 SC 242; Harishankar Rastogi vs. Girdhari Sharma reported in (1978) 2 SCC 165; Supreme Court Bar Association v. Union of India reported in (1988) 4 SCC 409; J&K Housing Board & anr vs. Kanwar Sanjay Krishan Kaul & ors reported in (2011) 10 SCC

714; Mohd. Arif alias Ashfaq vs. Registrar, Supreme Court of India & ors reported in (2014) 9 SCC 737.

12. We have heard learned counsel for the parties and perused the relevant provisions of law as well as documents placed on record by both sides.
13. Perusal of the contents of complaint reveals that allegation against the petitioner is with regard to deliberately deceiving the Court by making a false statement, filing affidavit without following procedure as per the Law Department Manual; wastage of precious time of the Court by making a mention in connection with a case on 31.1.2020 etc. Narration of facts in the complaint is with regard to appearance of private respondents in the PIL in the Court building along with the Law Officers of the office of Advocate General, who were holding high ranking posts in the State Government; entrusting of work of mentioning before the Court to the Law Officers of the rank of Additional Advocate General and Deputy Advocate General with ulterior motive etc. Making a mention for hearing of a review petition before a Bench which has not passed the order in WPPIL and thereby wasting precious time of Court. The entire complaint deals with the functioning of the office of the Advocate General except one instance mentioned in

Para-14 of the complaint about giving telephonic call to the counsel for the complainant, who was appearing for petitioner in WPPIL No.53/2018. It is also mentioned in the complaint that some false statement has been made before the Court.

14. Since the very jurisdiction and authority of the Chairman, Bar Council of Chhattisgarh to proceed with the complaint and issuance of notice to the petitioner has been challenged in this petition, adding that if the complaint is taken as it is, it does not disclose any act of misconduct, it would be apposite to refer to the relevant legal provisions for the facility of reference.

15. Section 35 of the Act of 1961 prescribes punishment of advocates for misconduct under which complaint is made and relevant portion of the same is extracted below for ready reference:-

“35. Punishment of advocates for misconduct.—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. 1[(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council 2[***] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the

advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf. 3[Explanation.—In this section, 4[section 37 and section 38], the expressions “Advocate-General” and Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]”

16. Part-VII of the BCI Rules deals with the procedure for disciplinary proceeding and review. Chapter-I of Part VII of the BCI Rules deals with complaint against advocate and procedure to be followed by the Disciplinary Authority of the State Bar Council and Bar Council of India. Clause-A (1) of Chapter-I deals with the complaint and inquiry under Sections 35, 36 & 36B of the Act of 1961. Relevant rules of Chapter-I

applicable in the facts of present case are reproduced below:-

“(2) The Secretary of the Bar Council may require the complainant to pay the prescribed fees if not paid, to remove any defects and call for such particulars or copies of the complaint or other documents as may be considered necessary.

(3) On a complaint being found to be in order, it shall be registered and placed before the Bar Council for such order as it may deem fit to pass.”

17. Chapter-1 of the BCI Rules has been framed by the Bar Council of India under Section 49 (1) (f) of the Act of 1961, which reads as under:-

“(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

18. A glance of Section 35 (1) of the Act of 1961 would demonstrate that on receipt of a complaint or otherwise the State Bar Council has reason to believe that any advocate has committed professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. The Law Makers' while enacting provision of Section 35 of the Act of 1961 has put a barrier over a State Bar Council that it shall not refer any complaint for disposal to its Disciplinary Authority, unless it has reason to believe that an advocate complained against has been guilty of professional or other

misconduct. In other words, a State Bar Council, on receipt of a complaint against an advocate on its roll and before referring the same to its Disciplinary Committee for disposal, is required to apply its mind to find out whether there is any reason to believe that advocate complained against has been guilty of professional or other misconduct. The object behind putting such a barrier in Section 35 of the Act of 1961 is to protect the image, reputation & interest of advocates and to save them from unnecessary harassment due to false and frivolous complaints.

19. Clause-A (2) of Part-VII of Chapter-I of the BCI Rules provides that before referring a complaint under Section 35 (1) of the Act of 1961 to one of its Disciplinary Committees to be specified by it, the Bar Council may also call for comments from the advocate complained against. Thus, it is evident that in both the above provision, it is the 'State Bar Council' who has been specifically empowered to deal with complaint against any advocate on its roll. In the procedure prescribed under Section 35 of the Act of 1961 and the Rules of the BCI to be followed on receipt of a complaint against an advocate, the word 'Bar Council' has been used and not the words 'Chairman of Bar Council'.

20. Chapter-II of the Act of 1961 provides 'Bar Council' and Section 3 (b) talks about the constitution of the 'State Bar Council' which provides for total number of elected members of State Bar Council looking to the electorate in each State Bar Council. Section 3 (3) mentions about the election of the Chairman and the Vice-Chairman by the Council.

21. Section 49 of the Act of 1961 grants general power to the Bar Council of India to make rules and sub-section (f) of Section 49 empowers the Bar Council to prescribe procedure to be followed by the Disciplinary Committee of a State Bar Council and by its own Disciplinary Committee. The procedure to be followed by the Disciplinary Committee on receipt of a complaint against an advocate is outlined by the Bar Council of India in Chapter-I of Part VII of the BCI Rules, which is titled as 'Disciplinary Proceeding & Review'. Rule 1 (2) of Part VII of BCI Rules requires the Secretary to call the complainant to pay the prescribed fees, if not paid, to remove defect, if any, and for such particulars or copies of the complaint or other documents as may be considered necessary. Rule 1 (3) says that if the complaint is found to be in order, the Secretary is required to place the same before the Bar Council for such order

as it may deem fit to pass. It is important to note that under Rule 1 (3) of the Chapter-I of Part-VII of the BCI Rules, it is the 'Bar Council' who has been authorized to pass order at the first instance. Rule 2 of Chapter-1 specifically provides that before referring a complaint under Section 35 (1) of the Act of 1961, the Bar Council may also call for comments from the advocate complained against. Thus, in the procedure to be followed on receipt of a complaint against any advocate, as provided under the BCI Rules, it is the Bar Council concerned, who is specifically authorized to initiate proceeding in accordance with law, and not the Chairman. In other words, as per provisions of Section 35 of the Act of 1961 and Part-VII of the BCI Rules, it is the 'Bar Council' and not the 'Chairman of Bar Council', who can take cognizance of a complaint filed against an advocate on its roll and pass appropriate orders

22. The 'Bar Council' has been defined under Section 2 (m) of the Act of 1961, which reads as under:-

“(m) “State Bar Council” means a Bar Council constituted under section 3;”

A 'Bar Council' consists of the members elected by the electorates of advocates on the rolls of the State Bar Council from amongst the electorate itself. The

elected members then elect a Chairman and a Vice-Chairman of State Bar Council, as provided in Section 3 (3) of the Act of 1961. The language used in Section 3 (3) of the Act of 1961 is very clear that the Chairman and the Vice Chairman to be elected by Council, meaning thereby the Chairman cannot be equated with a Council. Function, powers and duties of the Chairman are restricted only within Rule 12 of the Rules of 2004.

23. In view of above discussions, it is clear that the Law Maker's while enacting Section 35 of the Act of 1961 and the Bar Council of India while making the BCI Rules have purposefully used the words 'Bar Council' so that the decision to be taken whether the complaint is having any substance, to be proceeded with the elected members of the Bar Council (decision by the members of the elected members and not by any individual in the capacity of Chairman).

24. Learned counsel for respondent No.1 to justify the action taken by the Chairman, State Bar Council of Chhattisgarh, has not placed any material but for submission that the Chairman has exercised its powers under Rule 12 (a) of the Chhattisgarh State

Bar Council Rules, 2004 (for short 'the Rules of 2004') which reads as under:-

“12. Chairman;-

- (a) Save as otherwise provided in the Act and/or in the Rules made under the Act, the Chairman shall exercise a general control and supervision over all matters of the Council.”

25. A glance of above quoted Rule 12 (a) reveals that it starts with the words “save as otherwise provided in the Act and/or in the Rules made under the Act” and it only clothed the Chairman with the powers to exercise a “general control and supervision” over all matters of the Council. The words ‘General Control & Supervision’ used in Rule 12 (a) of the Rules of 2004 means having an administrative control over all the matters of the Bar Council, but it does not give power to exercise any act of exercising power under Section 35 of the Act of 1961. The power under Rule 12 (a) in the nature of administrative capacity can be inferred from the provisions of Section 15 of the Act of 1961 under which the State Bar Council has exercised the power as Rule Making Authority and the words used therein. Section 15 of the Act of 1961 specifically mentions that a Bar Council may make rules to carry out the purposes of this Chapter. Rule 15 has been made part of Chapter-II of the Act of

1961 which includes the State Bar Council, function of State Bar Council, terms of office of State Bar Council, constitution of Special Committee in absence of election, constitution of Legal Aid Committees, constitution of committees "other than disciplinary committee"; disqualification of the members of Bar Council; staff of Bar Council, accounts & audit, vacancies in Bar Council and candidates thereof; not to invalidate action taken, election of Bar Council not to question certain grounds. From perusal of other clauses of this Chapter it is clear that the rule making power of the State Bar Council under Section 15 of the Act of 1961 is only with regard to provisions of section mentioned in that Chapter. This Chapter under Section 10 of the Act of 1961 excludes constitution of Disciplinary Committee, meaning thereby the power to make rules dealing with the disciplinary action against an advocate, as envisaged under Section 35 of the Act of 1961, is not included under Section 15 of the Act of 1961. Perusal of Rule 12 (a) of the Rules of 2004 is also very clear and specific that general control and supervision power of Chairman is "other than" the powers provided in the Act of 1961 or the Rules made under the Act. The Chairman cannot exercise any power which is already provided to any authority

or body, as in the case in hand, the Bar Council under Section 35 of the Act of 1961 and Rules 34 & 35 of Chapter I, Part VII of the BCI Rules.

26. In the light of scheme under the Act of 1961 and the Rules framed thereunder as well as the law laid down by Hon'ble Apex Court in J.A.C. Saldanha's case (supra), it is apparently clear that the powers and duties of the Chairman, as prescribed under Rule 12 (a) of the Rules of 2004, is only to discharge administrative and executive functions and the power of superintendence would comprehend the Chairman to give directions, guidance and instructions to any of his subordinate to perform the duty in a certain manner.

27. The procedure to be followed on receipt of a complaint against any advocate is already provided in Section 35 of the Act of 1961 and Chapter-I of the Part VII of the BCI Rules, wherein the 'Bar Council' has been entrusted with the jurisdiction to deal with complaint against any advocate on its roll, and not the Chairman of the State Bar Council. This being the position, we are unable to accept the submission made by learned counsel for respondent No.1 that the Chairman of the State Bar Council is having jurisdiction and authority to issue notice to the

advocate against whom complaint is made. When specific words have been used by the Law Makers' and the Rule making authorities then the words used under the Act and the Rules cannot be interpreted otherwise then it is provided.

28. Another submission of learned counsel for respondent No.1 is that purpose behind issuing notice to petitioner is only to call for his comments on the complaint received from respondent No.2 and thereby granting opportunity to give explanation, if any. As held in the preceding paragraph that the exclusive jurisdiction/ power to deal with complaint under Section 35 of the Act of 1961, which includes calling for comments from the advocate complained against under Chapter I of Part VII of the BCI Rules, has specifically been conferred on the Bar Council and not on the Chairman and being so, the Chairman of a State Bar Council himself is having no jurisdiction to pass any order on complaint.

29. In the matter of the Bar Council of Maharashtra v. M.V. Dabholkar etc. etc. reported in (1976) 2 SCC 291 Hon'ble Supreme Court while interpreting the words 'reason to believe' has observed as under:-

“4.... The requirement of 'reason to believe' cannot be converted into a formalised

procedural roadblock, it being essentially a barrier against frivolous enquiries.....”

30. The State Bar Council under the Act of 1961 and the BCI Rules has been given exclusive jurisdiction to deal with the complaint at the first instance for the purpose of determining whether any case of misconduct against the advocate complained against is made out or not and if the Bar Council finds that the complaint *prima facie* makes out a case against the advocate, it would refer the case to its Disciplinary Committee for disposal and prior to that, it may also call for comments from the advocate complained against. In the case at hand, the order dated 22.5.2020 has been passed by the Chairman of the State Bar Council based on which the Secretary has issued notice to the petitioner requiring him to submit his comments on the complaint of respondent No.2. Thus, it is clear that before issuing notice to the petitioner calling for his comments on the complaint received, the complaint was not placed before the Bar Council and as such, there is no application of mind by the State Bar Council to the allegations contained in the complaint and material placed along with such complaint for arriving at a conclusion that it has reason to believe that the facts

discloses in complaint establishes any misconduct on the part of the petitioner herein, requiring consideration and initiation of proceeding under the Act of 1961 and the BCI Rules. This being the position, we are of the considered view that the action taken by the Chairman of respondent No.1 is without authority of law and jurisdiction.

31. As regards the relief claimed by the petitioner in Prayer Clause No.10.3 of the petition, which is to the effect that Rule 12 (a) of the Rules of 2004 be declared ultra vires to Section 35 of the Act of 1961 and the Rules made thereunder. Submission of learned Senior Counsel for the petitioner is that Section 28 of the Act of 1961 empowers the State Bar Council to make rules to carry out the purposes of Chapter-III of the Act of 1961 which deals with admission and enrollment of advocates. Whereas, Rule 12 (a) of the Rules of 2004 deals with the powers and duties of the Chairman & Vice-Chairman of State Bar Council. Section 35 of the Act of 1961, finds place in Chapter-V i.e. Conduct of Advocates, therefore, Rule 12 (a) of the Rules of 2004 is ultra vires to the provisions of Section 35 of the Act of 1961.

32. Chapter V of the Rules of 2004 provides for “Powers and Duties of the Chairman and Vice-Chairman”, and it has been made by the State Bar Council under sub-section (2) of Section 15 of the Act of 1961, which confers powers on the State Bar Council to make rules on various purposes enumerated therein. Rule 12 (a) of Chapter V of the Rules of 2004 starts with the words “save as otherwise provided in the Act and/or in the Rules made under the Act” and it talks about general control and supervision of the Chairman over all the matters of the Council. This rule has been framed for exercising powers by the Chairman, which is not included and provided under the Act of 1961 or the Rules made thereunder to be executed by some other authority. The use of words ‘general control and supervision’ in this rule does not mean exercise of powers by the Chairman, even the powers which are specifically provided under the Act and the Rules framed thereunder, upon some other, but it is in the matter of having power to control and supervise over all matters of the Council other than provided under the Act or the Rules made thereunder to the 'Bar Council'. Hence, Rule 12 (a) is not inconsistent with any other provision of the Act of 1961 and/or Rules made thereunder, rather it is supplemental in nature.

33. In view of use of specific words “save as otherwise provided in the language of Rule 12 (a), we do not find any force in the submission of learned Senior Counsel for the petitioner that Rule 12 (a) of the Rules of 2004 is ultra vires to Section 35 of the Act of 1961.

34. Next submission made by learned Senior Counsel for the petitioner is that the contents of complaint do not disclose commission of any act on the part of the petitioner which amounts to any misconduct much less professional misconduct and the complaint itself be dismissed. Perusal of the complaint, as discussed in preceding paragraphs, deals with allegation that the petitioner and other Law Officers of the office of the Advocate General, who are named therein, took the respondents of the PIL to the Court No.3 and a mentioning of case was made before the Court concerned by them in presence of the Additional Advocate General (who has been impleaded as one of respondents in the complaint) and before the Court, the Additional Advocate General made a statement that they are also going to file review petition against the order passed by the Court in the PIL; before making special mention, a telephonic call was made to the advocate representing the petitioner

in the PIL, informing him that they are going to make a mention before the Court. Further, the complaint deals with the procedure to be followed by the Law Officers as per the Law Manual. The respondents, who were impleaded in the PIL and came to Court No.3 along with the Law Officers (as pleaded in complaint) for the purpose of making a mention before the Court, were highly placed officers of the State Government and not the private litigants. Interaction with them does not amount to professional misconduct unless anything is done contrary to the interest of the State to whom the officers of the office of Advocate General represent. The telephonic information to the advocate of mentioning may be for bringing into his notice so that he may be aware of what the respondents are making prayer before the Court.

35. So far as other facts pleaded in the complaint with regard to making of incorrect submission by the petitioner or other Law Officers before the Court and wasting of precious time of the Court for the purpose of mentioning etc. is concerned, it is for the Court concerned to decide whether precious time of the Court is wasted by making mention before it or dignity of the majesty of the Court is lowered down.

The party aggrieved by any of the order of the Court and wants to make any prayer before the Court and if permitted to secure the ends of justice, it was between the Court and those litigants who appeared before the Court. Needless to mention here that this Court vide order dated 3.7.2020 dismissed the contempt petitions filed by the State as well respondent No.2 by holding that both the petitions lack substance for taking cognizance.

36. Taking shelter of Section 35 (1) (A) of the Act of 1961, respondent No.2 has pleaded in his reply that in the aforementioned provision the words 'any person interested' are used and the complainant comes within the purview of 'any person interested', therefore, the complaint is maintainable though there is no 'advocate-client or colleague' relationship between respondent No.2 and the petitioner or other Law Officers named in the complaint. It has further been pleaded that respondent No.2 has every right and authority to file complaint against any violation of the clauses & rules of the Law Department Manual by the Law Officers of the office of the Advocate General. In order to justify filing of complaint, in Para-11 of reply respondent No.2 has pleaded thus:-

“11.Reply to Paragraph 8.5 & 8.6 of the petition:-

The contents of this paragraphs are denied as they hold no water. There is no dispute to the status of the petition to file the complaint as there is no bar as to limitation of certain persons to file the Complaint under Sec.35 of the Advocates Act. It is also denied that an advocate can only be proceeded against only at the behest of violation of Para 34 and 35 of the Bar Council of India Rules. The Act alleged in the impugned complaint is not related to the conduct of the Advocate presently Chaired as Advocate General, or the law Officers towards or against the opponent, but the conduct of the delinquent advocates towards he Court and the society under the Professional ethics. The Acts of the petitioner and other delinquent advocates have given a picture to the general public that the Creamy Layer and elite Class would be governed by different sets of Law, where even the prosecution would be defending the Accused, leaving the complainants stranded.”

37. The words ‘any interested person’ used in Section 35

(1) (a) of the Act of 1961 are in the context of withdrawal of proceeding pending before the Disciplinary Committee of a Bar Council, but so far as filing of complaint against an advocate alleging misconduct therein is concerned, there must exists ‘advocate-client’ relationship or interaction with the person complaining and the advocate against whom complaint is made, but in case at hand, no such instance is mentioned by respondent No.2. From perusal of the entire complaint and even the pleadings made in reply to writ petition, we, prima facie, do not find any substance in the complaint attracting provisions of Section 35 of the Act of 1961. Section-III of Chapter-II of Part VI of the BCI Rules

prescribes duty of advocate to opponent, which reads as under:-

“SECTION III - DUTY TO OPPONENT

34. An Advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate.

35. An Advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.”

In view of above, an advocate can communicate or negotiate with his opponent through the advocate representing opponent. As per pleadings of the complainant, the Additional Advocate General concerned has interacted with his advocate. In view of such pleading, we do not find any act of misconduct upon interaction of an advocate with other advocate.

38. The case laws relied upon by learned counsel for respondent No.2 in his reply are on different facts. In the matter of Harishankar Rastogi (supra), the question before Hon'ble Supreme Court was as to whether a private person, who is not an advocate, can be permitted to represent other person in the Court. In the matter of M.V. Dabholkar (supra), the allegation against the advocates were with regard to snatching of brief while sitting in front of the Court of Magistrate. The judgment in the matter of J.K.

Housing Board (supra) deals with the procedure prescribed under the Land Acquisition Act and also Jammu & Kashmir Housing Board Act, 1976 in respect of land acquisition proceeding. In the matter of Supreme Court Bar Association(supra) the issue for consideration was with regard to imposition of punishment by the Court in criminal contempt proceeding and thereafter passing of an order suspending an advocate to practice for a period of three years and in this case the Hon'ble Supreme Court has held that power of suspension of an advocate is with the Bar Council.

So far as the facts of present case are concerned, the petitioner has approached this Court with a prayer to quash the complaint on the ground that frivolous and baseless complaint has been made against him with intent to malign his image and reputation, adding that the power exercised by the Chairman is not vested in him under the Act of 1961 and the Rules made thereunder and it is under these circumstances this Court in the peculiar facts of the case has considered the contents of the complaint.

39. Normally the Courts should not interfere with jurisdiction of any authority under the statute, but when it is brought to the notice of the Court by filing

petition under Article 226 of the Constitution of India that proceeding against any authority, particularly a Constitutional authority, is filed without any substance and only with an intention to harass and malign the image of such authority, and after considering the material placed on record, if Court reaches to a conclusion that the grounds taken in the writ petition filed before the Court that even after taking the entire allegations made in the complaint on its face value, the same does not disclose commission of any misconduct, as alleged against him, then the Court can quash the complaint in exercise its power under Article 226 of the Constitution of India.

In the case at hand, the complaint has been filed against an advocate, who is holding a constitutional post, along with other advocates, who are Law Officers of the office of the Advocate General, questioning functioning of the office of Advocate General and alleging that act on the part of petitioner as also other Law Officers named in the complaint is not in consonance with the clauses/ rules of the Law Department Manual or some false statement has been made before the Court. This Court while deciding criminal contempt petition filed

by respondent No.2 was of the view that the petitioner or any other Law Officers, at any point during the course of hearing of PIL or review petition, has not made any false statement, else the Court itself would have taken action against any such statement.

40. In view of above discussions, as the nature of allegations contained in the complaint relate to functioning of the office of the Advocate General i.e. work distribution by the Advocate General to Law Officers deputed in the office, and further that there is no direct interaction of respondent No.2 (complainant) with the petitioner or any other Law Officer of the office of the Advocate General, named in the complaint, or having any conversation with any of them at any point of time, we are of the view that the complaint even if taken as it is, does not constitute any 'misconduct' on the part of the petitioner as well as other law officers named in the complaint filed by respondent No.2. In other words, we, *prima facie*, do not find any substance in the complaint attracting provisions of Section 35 of the Act of 1961 and this being the position, the same is liable to be quashed.

41.WPC No.1261/2020 has been filed by complainant/ petitioner with a prayer that the proceeding initiated on his complaint be transferred to the Bar Council of India. Mr. Devershi Thakur, learned counsel for complainant / petitioner has referred to Section 36B (2) of the Act of 1961 and representation (Annexure P-3 to petition) made to the Secretary, Bar Council of India, New Delhi for taking up the complaint filed by complainant/ petitioner. Representation has been filed by complainant on 21.5.2020 and this petition has been filed on 12.6.2020. The provisions of sub-section (2) of Section 36B of the Act of 1961 prescribes for a particular period in which the complaint filed against any advocate is to be decided and upon failure of which, there is automatic transfer of proceeding to the Bar Council of India. The representation of the petitioner was not decided by the Bar Council of India and perusal of Annexure P-3, which is said to be a representation made by the petitioner, reveals that it has been addressed to Shri Samant Sen, Secretary, Bar Council of India, and not to the Bar Council of India. Thus it is clear that there is no representation to the Bar Council of India. Representation (Annexure P-3) is not decided till date. As we have already dismissed the complaint in

WPC No.1084/2020, this writ petition also stands dismissed.

42. For the reasons assigned above, WPC No.1084/2020 is allowed in part. Rule 12 (a) of the Rules of 2004 is not ultra vires to Section 35 of the Act of 1961. The Chairman of State Bar Council of Chhattisgarh has no authority or jurisdiction under the law to pass any order on a complaint filed under Section 35 of the Act of 1961 and consequently, the entire complaint proceedings initiated by respondent No.2 including the complaint (Annexure P-1) are quashed.

43. Writ Petition (C) No.1261/2020 stands dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-