

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9096 OF 2022

Khalid Babu Qureshi : Petitioner.

Versus

The State of Maharashtra and ors. : Respondents.

Mr. S B Talekar a/w Ms. Madhavi Ayyapan i/by Talekar & Associates for the
Petitioner.

Mrs. P J Gavhane, AGP for the Respondents/State.

Mr. Makarand Bakore for Respondent No.2.

Mr. Zaid Anwar Qureshi for Respondent No.4.

CORAM : S. V. GANGAPURWALA &
A.S. DOCTOR, JJ.

DATED : 02nd August 2022

P.C.

1 The Petitioner assails the order passed by Respondent No.2 – The Bar Council of Maharashtra and Goa. Under the impugned order the name of the Petitioner is struck off from the roll of advocates maintained by Respondent No.2 – The Bar Council of Maharashtra and Goa.

2 Mr. Talekar, the learned advocate for the Petitioner, submits that principles of natural justice are violated. The impugned order is passed without adhering to the procedure prescribed under the Advocates' Act. The learned advocate further submits that large number of illegalities are committed. The charges are not framed as is required to be framed. According to the learned advocate, the chairman has changed the constitution of committee, and the

chairman could not have superseded the decision of full house in such scenario. Even if remedy of appeal is available, the High Court under Article 226 of the Constitution of India can exercise its jurisdiction. The learned counsel to buttress his submissions relies upon the judgment of Apex Court in the case of *Whirpool Corporation v/s. Registrar of Trade Marks, Mumbai and ors.* reported in *(1998) 8 SCC 1* and another judgment of Apex Court in the case of *Madhya Pradesh High Court Advocates Bar Association and another v/s. Union of India and another* reported in *2022 SCC OnLine SC 639*. Mr. Talekar, the learned advocate for the Petitioner, submits that in the said case though there was a remedy of appeal available, still the jurisdiction under Article 226 of the Constitution of India, being a plenary jurisdiction, exercised by the High Court. The learned advocate further submits that at the time of evidence and hearing also full strength of members were not available and many time one member was only present. All these aspects are required to be considered by this Court. Mr. Talekar, the learned Advocate for Petitioner, also relies upon the judgment of Apex Court in the case of *An Advocate v/s. Bar Council of India and another* reported in *1989 Supp (2) SCC 25*. According to the learned advocate for the Petitioner, the Respondent – Complainant is bent upon to see that the membership of Petitioner, as a member of Waqf Board by virtue of he being an advocate, is cancelled and for the said purpose resorted to file Petitions.

3 It is further contended by learned Advocate for Petitioner that, the documents on record clearly establish that the Petitioner is not an active partner of partnership firm and a non-executive director of the company.

4 The learned advocate for Respondent No.2 – The Bar Council of Maharashtra and Goa submits that the Petitioner has a remedy of appeal under Section 37 of the Advocates' Act and no illegalities have been committed while passing the impugned order and there was no violation of principles of natural justice. Ample opportunities have been given to the Petitioner. The Petitioner has not stepped into witness box on his own volition and now alleges violation of principles of natural justice. The Petitioner has availed opportunity to cross examine the complainant.

5 We have considered the submissions of the learned counsel for the parties. The jurisdiction of this Court under Article 226 of the Constitution of India is plenary and extra-ordinary. This Court exercises restraint while exercising the writ jurisdiction in case of availability of alternate remedy.

6 This Court in spite of availability of alternate remedy, may exercise its jurisdiction in cases where the order passed is manifest arbitrary, without jurisdiction and without adhering to the principles of natural justice.

7 The Advocates Act prescribes remedy of appeal and further appeal to the Supreme Court against the order of the Bar Council of India. The Petitioner has alternate efficacious remedy of filing an appeal against the order passed by Respondent No.2 – The Bar Council of Maharashtra and Goa under Section 37 of the Advocates Act.

8 In the present order hearing had taken before the Bar Council of Maharashtra and Goa. Considering the scheme under the Advocates Act and disputed questions of facts involved in the matter, we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India, and relegate the Petitioner to the alternate remedy.

9 In the light of above, we dispose of the writ petition with liberty to the Petitioner to avail the alternate remedy. In that event, the contentions of the respective parties are kept open. For a period of four days from today, the Respondents may not act on the basis of impugned order. Needless to say that after lapse of four days period, the protection granted shall come to an end. No costs.

[A.S. DOCTOR, J]

[S. V. GANGAPURWALA, J]