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WP No. 25090 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 25090 of 2012
and
M.P.Nos.1 of 2012 and 1 of 2013
and WMP.Nos.16740 and 16741 of 2022

J. Thilagaraj

.. Petitioner

Versus

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

2. The Disciplinary Committee-III
rep. by its Chairman
Bar Council of Tamil Nadu
Chennai - 600 104

3. J. Mary Theresa

4. S.R. Charles Balavendar Reddy

.. Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Certiorari to call for all the records relating to the
impugned charge sheet dated 25.08.2012 framed in D.C.C. No. 79 of 2011
pending on the file of the Disciplinary Committee-III, Bar Council of



WP No. 25090 of 2012

Tamil Nadu, Chennai - 600 104, the second respondent herein and quash the same.

For Petitioner : Mr. T.V. Ramanujam, Senior Counsel
for Mr. R. Selvakumar

For Respondents : Mr. C.K. Chandrasekar for RR1 and 2
R-3 died
Mr.S.J. Jagadev for R4

ORDER

R. MAHADEVAN, J.

Challenging the charge sheet dated 25.08.2012 framed in D.C.C. No. 79 of 2011 pending on the file of the Disciplinary Committee-III, Bar Council of Tamil Nadu, Chennai - 600 104 / second respondent herein, the petitioner has come up with this writ petition to quash the same.

2. For better appreciation, the charges framed against the petitioner are reproduced below:

"It is alleged by the Complainant that they approached you through one Joseph Dhanraj for filing a civil suit with respect to two items of their family properties and a sum of Rs.16,000/- (Rs.13,000/-, Rs.3,000/-) and Rs.10,000/- (totalling Rs.26,000/-) was paid to you towards your fees during the year 2006 and you have not chosen to file any civil suit and when the complainant was asking about the particulars of the case, you have given them imaginary case number as O.S. No. 1109 of 2006 during the year 2010 and on verification of the same, there is no such case number and as such, you have committed professional



WP No. 25090 of 2012

misconduct or any other misconduct, which is punishable under section 35(1) of the Advocates Act, 1961. What do you say?

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It is also alleged that when the complainant have requested you for return of original documents instead of handing over the same, you have told them that they were misplaced and you have not handed over the said documents till this date and as such, you have committed professional misconduct or any other misconduct, which is punishable under section 35(1) of the Advocates Act, 1961. What do you say?

3. The background facts leading to the petitioner to file this writ petition are as follows:

3.1. The petitioner enrolled as an advocate on the file of the respondents 1 and 2 on 25.09.1998. During the course of his practice, the third and fourth respondents made a complaint against him on 13.04.2010 before the Bar Council of Tamil Nadu. It is alleged that they approached the petitioner with a request to file a civil suit in respect of two items of their family properties against one Amala Rani, W/o. Late S.R. Sundar @ S.R. Robert Bellarmine Dominic Savio. The complaint further proceeds to state that in the year 2006, one Joseph Dhanraj @ Joseph, who is relative of the respondents 3 and 4 introduced the petitioner to them. After deliberations, the third and fourth respondents entrusted the title documents and other required documents to the petitioner so as to enable him to institute a civil suit, besides paying a sum of Rs.16,000/- towards professional charges for the same. According to the respondents 3 and 4, whenever they asked the petitioner about the status of the case, it was stated by him that the plaint was filed and notice was issued to



WP No. 25090 of 2012

the other side; and the petitioner also assured that there was no need to worry about the case and he will look after it. Subsequently, the fourth respondent paid a further sum of Rs.10,000/- to the petitioner through the said Joseph Dhanraj. During the year 2010, when the fourth respondent made attempts to meet the petitioner, the petitioner deliberately avoided to see him. However, the fourth respondent met the petitioner along with Joseph Dhanraj at his residence, where he was informed that the plaint has been numbered as O.S. No. 1109 of 2006. But, on enquiry, it came to light that there was no such case filed as O.S. No. 1109 of 2006. When the fourth respondent asked the petitioner to reveal the correct case number, he admitted that the case has not been filed before any court. The third and fourth respondents also came to know that without their consent, the petitioner had entrusted all the documents to the said Amala Rani / defendant in the suit. It is in those circumstances, the third and fourth respondents jointly made the said complaint to the first respondent requesting to take action against the petitioner for having committed professional misconduct and direct the petitioner to return back the original documents, which were handed over to the said Amala Rani.

3.2. The aforesaid complaint made by the respondents 3 and 4, was taken on record as Complaint No.66 of 2010. Subsequently, the first respondent sent a notice dated 05.07.2011 to the petitioner enclosing a copy of



WP No. 25090 of 2012

the complaint dated 13.04.2010, to which, the petitioner submitted his comments on 18.10.2011. Thereafter, by resolution no.249 of 2011, dated 22.10.2011, the complaint was referred to the second respondent / Disciplinary Committee for enquiry and disposal. The second respondent took the same as DCC No.79 of 2011 and issued a notice dated 23.12.2011 to the petitioner for the hearing on 07.01.2012. Upon receipt of the same, the petitioner submitted his counter (statement of defence) reiterating the averments made in the comments, besides filed a petition on 04.02.2012 raising preliminary issue as regards the maintainability of the complaint by both the complainants and seeking to dismiss the complaint. However, by order dated 21.07.2012, the second respondent rejected the said preliminary objections raised by the petitioner with an observation that the petitioner can very well agitate all the issues during the enquiry and there was no necessity to take up the question as a preliminary issue at the first instance. Thereafter, the second respondent framed charges on 25.08.2012 against the petitioner, which are impugned in this writ petition.

4.1. Mr. T.V. Ramanujam, learned Senior counsel appearing for the petitioner submitted that the respondents 1 and 2 ought not to have entertained the complaint jointly preferred by the respondents 3 and 4 herein. It was



WP No. 25090 of 2012

alleged in the complaint that the petitioner, inspite of receipt of the professional fee as also the documents, failed to file a civil suit in the year 2006. However, the fact remains that the plaint was prepared for and on behalf of the first complainant/third respondent herein and her signatures were obtained in Vakalat, plaint and other documents. When the plaint was about to be filed, it was the first complainant/third respondent herein, who changed her mind and decided not to institute the suit as against her own daughter-in-law and the same was informed to the petitioner. In adherence to the said request made by the third respondent, the petitioner did not institute the suit. Elaborating further, the learned senior counsel submitted that such a decision was independently taken by the third respondent and the same may not be aware by the second complainant /fourth respondent herein. In such a situation, if there is any professional misconduct attributable against the petitioner, the third respondent alone is the competent person to prefer the complaint, who has exclusive knowledge about the interactions that had with the petitioner. In fact, until February 2010, the first complainant / third respondent alone was the client of the petitioner and the second complainant/fourth respondent was not the client. Therefore, the second complainant / fourth respondent has no right to prefer any complaint as against the petitioner.



WP No. 25090 of 2012

4.2. Adding further, the learned senior counsel appearing for the petitioner submitted that the petitioner raised a doubt as to whether the first complainant/third respondent voluntarily preferred the complaint against him. According to the learned senior counsel, the complaint was engineered by the second complainant / fourth respondent, who, without knowing the interaction that had by her mother / third respondent with the petitioner, hastily preferred the complaint. Thus, the second complainant/ fourth respondent has no *locus standi* to file the complaint, which culminated in framing of charges against the petitioner. In fact, the second complainant/ fourth respondent came into the picture only in the year 2010 and by acceding to his request, the petitioner prepared the plaint; and when the same was likely to be filed, the fourth respondent received the entire case papers / bundle and thereafter, did not meet the petitioner. Therefore, the learned senior counsel submitted that the second complainant / fourth respondent may not have any grievance as against the petitioner, while so, the complaint given jointly by the respondents 3 and 4 is not maintainable and it ought not to have been entertained by the respondents 1 and 2.

4.3. The learned senior counsel appearing for the petitioner relied on the decision of this Court in ***R. Swaminathan and another v. Bar Council of Tamil Nadu, High Court Campus, Chennai - 600 104 and another [2014-5-***



WP No. 25090 of 2012

LW.540/, wherein, the petitioners, who are practicing as advocates, have offered legal opinion in favour of a company based on which the company sold its property to another company. The complainant was one of the shareholders of the company which sold the property to the other company. According to the complainant therein, based on the erroneous legal opinion tendered by the petitioners/advocates, the property was sold by the company. This Court, while allowing the writ petitions, held that the complainant was not the client of the writ petitioners, while so, it is not open to him to make any complaint against the writ petitioners; and when the clients of the petitioners are satisfied with the professional service rendered by them, the complainant has no *locus standi* to prefer the complaint. It was further held that when a complaint is made against any advocate by a litigant alleging professional misconduct, it is open to the Bar Council to consider at least, *prima facie* whether the allegations constitute a professional or other misconduct. However, when such a complaint was given by a person, who is not the client or in whose favour any professional service has been rendered, then the Bar Council has no jurisdiction to entertain such complaint.

4.4. Pointing out the above decision, the learned senior counsel for the petitioner contended that the second complainant/fourth respondent herein was not a client of the petitioner at all, when the plaint was prepared in the year



WP No. 25090 of 2012

2006. The plaint was prepared only for and on behalf of the first complainant/ third respondent herein. While so, the complaint given by both the respondents 3 and 4 / complainants ought not to have been entertained by the respondents 1 and 2. Though the petitioner raised a preliminary objection for maintainability of the complaint jointly filed by both the complainants, the second respondent/ disciplinary committee rejected the same by observing that *the second complainant was also well aware of the fact about the entrustment of the case to the petitioner and hence, he is also competent person to speak about the facts of the complaints, which are exclusively within his knowledge and no prejudice is being caused because of his joining with the first complainant in filing this complaint.* The observation so made by the second respondent is erroneous inasmuch as the petitioner has specifically pleaded that it was at the behest of the first complainant not to file the plaint against her own daughter-in-law, who is also a widow, the petitioner did not file the suit in the year 2006 and the same was exclusive knowledge of the third respondent alone and not within the knowledge of the second complainant/fourth respondent.

4.5. The learned senior counsel for the petitioner also contended that on receipt of the complaint from the complainants/respondents 3 and 4, a notice was said to have been issued on 14.06.2010, but it was not received by the petitioner at all, but on 15.07.2011, another notice termed as 'reminder' was



WP No. 25090 of 2012

received by him. Immediately, the petitioner filed extension of time petitions for submitting his reply to the said notice. Subsequently, on 18.10.2011, he submitted his reply / comments in response to the complaint. The second respondent / disciplinary committee, however observed that the petitioner did not give his reply for more than a year. Such observation made by the disciplinary committee not only caused serious prejudice, but also showed biased attitude towards the petitioner. It is with such attitude of bias, the disciplinary committee has framed the charges against him, which the committee ought not to have made. Even the sequence of instances narrated by the complainants coupled with the documents filed by them would *prima facie* establish that the petitioner is not guilty of any misconduct much less professional misconduct. In this regard, the learned senior counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Nandlal Khodidas Barot v. Bar Council of Gujarat and others [1980 (Supp) Supreme Court Cases 318]*** wherein it was held that '*before referring the complaint against the appellant therein to the disciplinary committee, the State Bar Council is expected to apply its mind to the allegations in the complaint to prima facie found that the case has to go before the disciplinary committee*'. Whereas, in the present case, the first respondent, without application of mind, has mechanically referred the complaint given by the complainants to the second



WP No. 25090 of 2012

respondent / Disciplinary Committee, which is illegal and vitiated the entire proceedings initiated against the petitioner. Therefore, the learned senior counsel submitted that the writ petition will have to be allowed by setting aside the charges framed by the second respondent.

5. Per contra, Mr. C.K. Chandrasekar, learned standing counsel appearing for the respondents 1 and 2, submitted that before framing the charges, the comments of the petitioner were sought and he was also given extension of time thrice to enable him to offer his comments to the complaint, which was not effectively utilised by the petitioner by sending proper reply. Therefore, the respondents 1 and 2 based on the available materials, arrived at a conclusion that the petitioner alleged to have committed the professional misconduct and they referred the complaint made by the complainants to the disciplinary committee for enquiry and disposal. Thereafter, the disciplinary committee based on the materials given by the complainants, framed the charges against the petitioner. The petitioner, instead of facing the enquiry pursuant to the charges framed, hastily approached this Court by filing this writ petition. Thus, according to the learned counsel, the writ petition is pre-mature and hence, the petitioner must be directed to participate in the enquiry that may be conducted by the second respondent / disciplinary



WP No. 25090 of 2012

committee; and he can very well to prove his innocence by adducing the oral and documentary evidence during the course of enquiry. Therefore, the learned counsel prayed for dismissal of the writ petition as devoid of merits.

6.1. Mr. S.J. Jagadev, learned counsel appearing for the fourth respondent would contend that the fourth respondent along with his mother / first complainant / third respondent, entrusted 11 original documents along with a fee of Rs.16,000/- to the petitioner for filing a suit. At that time, the mother of the fourth respondent, namely the third respondent, was 80 years old and was partially disabled and therefore, it was the fourth respondent who had instructed the petitioner, in all respects, to institute the suit. Thereafter, in the year 2007, the fourth respondent went to United States of America on account of his job and he requested Joseph Dhanraj to follow and assist the petitioner in filing the case. Even he was in United States of America, the fourth respondent periodically contacted the petitioner over phone and e-mail. However, whenever the fourth respondent came down to India, he asked the petitioner about the status of the case, but he received only vague reply. On one occasion, the petitioner demanded a further sum of Rs.10,000/- which was also paid by the fourth respondent. While so, in the year 2010, when the fourth respondent requested the petitioner to intimate him about the status of the case,



WP No. 25090 of 2012

he gave the case number as O.S. No. 1109 of 2006, but on verification, it was proved to be a bogus case number. Therefore, the fourth respondent asked the petitioner to divulge the correct case number, at that time, the petitioner admitted that he did not file any case and he undertook to file a fresh suit in the year 2010. In those circumstances, the petitioner hurriedly prepared a case in the year 2010 and obtained the signature of the third and fourth respondents herein. When the fourth respondent contacted his friends, they informed that the case which was to be filed in the year 2006, need not be filed in the year 2010 as it will be hit by the provisions of the Limitation Act. Therefore, the fourth respondent demanded the petitioner to return back the bundle. Accordingly, the petitioner returned the case bundle, but avoided to return the original documents pertaining to the suit properties. On enquiry, the fourth respondent came to know that the petitioner had entrusted those documents to his opponent Amala Rani. In view of such lackadaisical attitude on the part of the petitioner, the third and fourth respondents were constrained to file the complaint before the first respondent.

6.2. Continuing further, the learned counsel for the fourth respondent submitted that the petitioner clearly admits that he did not file the plaint in the year 2006, though he had obtained all the documents as well as the professional charges for the same. For the reasons best known to him, he did



WP No. 25090 of 2012

not file the suit, even thereafter. Due to such attitude on the part of the petitioner, the respondents 3 and 4 were deprived of their legal right to sue for appropriate relief against the said Amala Rani.

6.3. The learned counsel for the fourth respondent submitted that as regards the preliminary issues raised by the petitioner, it is evident from the reply dated 18.10.2011 as well as the statement of defence dated 25.03.2012 submitted by him that he had admitted his lapses in not filing the plaint from 2006 to 2010 inspite of receiving all the documents as well as requisite fees. Though the petitioner attempted to justify that the complainants have signed the plaint prepared only on 01.03.2010 and therefore, they have no right to point out the delay in not filing the plaint in the year 2006 itself, the same was brushed aside by the disciplinary committee stating that the complainants being lay persons, did not know the legal implication in filing the plaint belatedly and it is for the petitioner to have properly guided them and swiftly filed the plaint even in the year 2006. In any event, the disciplinary committee, after having found the *prima facie* case made out by the complainants, correctly rejected the preliminary objections raised by the petitioner and proceeded with the complaint by framing charges, which do not call for any interference at the hands of this court.



WP No. 25090 of 2012

6.4. It is also submitted by the learned counsel for the fourth respondent that the first respondent referred the complaint dated 13.04.2010 to the second respondent / disciplinary committee for enquiry and disposal by resolution no.249/2011 dated 22.10.2011, which culminated in framing of charges on 25.08.2012 itself. However, the petitioner filed this writ petition on 12.09.2012 and obtained an order of interim stay on 13.09.2012. After 12 years of filing the writ petition, the petitioner, as an after-thought, filed an application to amend the prayer to call for the records relating to Resolution No.249/2011 dated 22.10.2011 passed by the first respondent and subsequent charge sheet dated 25.08.2012 framed in proceedings DCC No. 79 of 2012 pending before the second respondent / Disciplinary Committee-III, Bar Council of Tamil Nadu. Thus, according to the learned counsel, the petitioner, in order to circumvent the proceedings, filed the writ petition to quash the proceedings and miscellaneous petition for amendment, which would stand testimony to the fact that the petitioner is not prepared to participate in the enquiry that may be conducted by the second respondent and to prove his innocence. The learned counsel also placed reliance on the decision of the Hon'ble Supreme Court in ***L.C.Hanumanthappa v. H.B.Shivakumar [2015 (6) CTC 562 (SC)]***, wherein, it was held that *a legal right accrued in favour of the respondent by lapse of time, should not be taken away by way of*



WP No. 25090 of 2012

amendment. Therefore, the learned counsel submitted that the writ petition filed by the petitioner is devoid of merits and it has to be dismissed.

7. We have heard the learned counsel appearing for all the parties and perused the documents placed before us.

8. It could be seen from the pleadings and records that the respondents 3 and 4 made a complaint on 13.04.2010 against the petitioner for the alleged professional misconduct, which was entertained by the first respondent as complaint no.66 of 2010. Subsequently, upon perusal of the available materials, the first respondent, after having opined that there was reason to believe that the petitioner is guilty of professional or other misconduct, referred the complaint to the disciplinary committee for enquiry and disposal by resolution No.249 of 2011 dated 22.10.2011. Thereafter, the second respondent / disciplinary committee issued a notice of hearing on 23.12.2011 in DCC No.79 of 2011. Upon receipt of the same, the petitioner filed his counter (statement of defence) on 25.03.2012, besides raising preliminary issues on 04.02.2012. However, the disciplinary committee rejected the preliminary issues on 21.07.2012 and framed the charges on 25.08.2012 against the petitioner. Therefore, this writ petition at the instance of the petitioner.



WP No. 25090 of 2012

9. During the pendency of this writ petition, the third respondent died on 19.06.2016 and the fourth respondent who is the son of the third respondent, is the only surviving legal heir of the third respondent, which fact was communicated by the counsel for the fourth respondent through a memo dated 17.12.2016.

10. The main bone of contention of the learned senior counsel for the petitioner is that the second complainant / fourth respondent has no *locus standi* to prefer the complaint along with the first complainant / third respondent against the petitioner for the alleged professional misconduct done in the year 2006. According to the learned senior counsel, the plaint was prepared for and on behalf of the first complainant/third respondent; when the same was about to be filed, the third respondent changed her decision and instructed the petitioner not to institute the suit as against her own daughter-in-law by name Amala Rani; and accordingly, the petitioner did not file any case in the year 2006. The interactions that took place between the third respondent and the petitioner, may not be aware by the second complainant / fourth respondent. In the year 2010, though the petitioner prepared the plaint, it was the fourth respondent, who demanded the case papers and obtained the same from the petitioner, before filing a suit. Therefore, the petitioner has not



WP No. 25090 of 2012

committed any professional misconduct as alleged in the complaint. Even if there is any professional misconduct attributable against the petitioner, the third respondent alone is the competent person to prefer the complaint, who has exclusive knowledge about the interactions that had with the petitioner and was the client of the petitioner. It is also submitted that the purpose of cancelling the settlement deed dated 19.11.2002 has been achieved and a new settlement deed had been executed in favour of fourth respondent and therefore, the complaint against the petitioner is only for the purpose of harassing him.

11. The contentions so raised on the side of the petitioner were vehemently opposed by the learned counsel for the contesting respondent viz., fourth respondent by stating that the third respondent was aged about 80 years, heart patient and partially disabled, at the time of handing over the original documents and paying the professional charges to the petitioner for the purpose of filing a case against her own daughter-in-law in the year 2006 and therefore, the fourth respondent who is the son of the third respondent, had given all the instructions on behalf of her, to the petitioner. Further, the fourth respondent followed up the case over phone and e-mail, when he was in USA on account of his job. In the year 2010, when he returned back to India, he met



WP No. 25090 of 2012

the petitioner and asked about the status of case; at that time, the petitioner gave the case number as OS.No.1109 of 2006 on the file of the City Civil Court, Chennai; on enquiry, it was found that such case number is bogus one and the petitioner did not file any case, which fact was also admitted by him. That apart, the petitioner entrusted all the original documents to the opponent of the complainants viz., Amala Rani and he did not return back the same to the fourth respondent, at the time of handing over the case bundle. Feeling aggrieved, the respondents 3 and 4 lodged the complaint against the petitioner before the first respondent, for the alleged professional misconduct committed by him. Thus, according to the learned counsel, the fourth respondent all along with the third respondent, has aware of all the events that took place right from the year 2006 onwards, and has locus to prefer the complaint, which cannot be questioned by the petitioner, so as to escape from the legal proceedings.

12. As regards the issue relating to maintainability of the complaint by the fourth respondent along with the third respondent, it is to be pointed out that when the same was raised as preliminary issue by the petitioner, it was rejected by the second respondent / disciplinary committee, by order dated 21.07.2012, the relevant portion of which is usefully extracted below:

"5.The second complainant is none else than the son of the first complainant and the first complainant is now aged more than 80 years. The



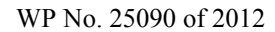
WP No. 25090 of 2012

WEB COPY

second complainant was also well aware of the fact about the entrustment of the case to the respondent and hence, he is also competent person to speak about the facts of the complaints, which are exclusively within his knowledge and no prejudice is being caused because of his joining with the first complainant in filing this complaint and he can very well agitate all these issues during the enquiry and hence, there is no necessity to take up this question at the first instance and hence, the request of the petitioner is hereby rejected."

Having regard to the admitted fact that the third respondent was aged about 80 years at the time of presenting the papers to the petitioner in the year 2006 for filing a case against her daughter-in-law; and the fourth respondent is none else than her son, who accompanied the third respondent to see the petitioner, this court finds no reason to disagree with the observation so made by the second respondent / disciplinary committee.

13. Importantly, it is to be noted that the petitioner did not file any case from 2006 to 2010, though he received the papers, obtained signatures, professional charges, etc., from the third respondent, for filing a suit. The first respondent, upon receipt of the complaint, provided reasonable time to the petitioner to submit his reply/ comments to the complaint and only thereafter, referred the same to the second respondent / disciplinary committee for enquiry and disposal. Even the second respondent, after issuance notice of hearing, and upon receipt of the counter (statement of defence) framed the charges against the petitioner. It is also to be noted that after 11 years from the



14. That apart, while appreciating the rival contentions, this court finds that there are various aspects to be considered viz., whether the petitioner gave a wrong case number as OS.No.1109 of 2006 to the complainant without filing any case; whether the petitioner entrusted the original documents relating to the suit properties to the opponent party viz., Amala Rani; etc. Concededly, charges were framed against the petitioner and the case is pending for enquiry before the disciplinary committee. At this stage, such disputed aspects cannot be gone into by this court, that too, under Article 226 of the Constitution of India and the same can be examined only by the fact finding authority, after full fledged enquiry, based on the oral and documentary evidence placed by the parties.



WP No. 25090 of 2012

15. Therefore, this court deems it appropriate to direct the second respondent / disciplinary committee to proceed with the enquiry of the case in DCC No.79 of 2011 pending on its file and dispose the same, on merits and in accordance with law, after affording due opportunity to both the petitioner and the complainant viz., fourth respondent, following the principles of natural justice, as expeditiously as possible. The petitioner is at liberty to raise all the contentions as were made in this writ petition, before the second respondent at the time of enquiry.

16. With the above direction and observation, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

(R.M.D., J.) (M.S.Q., J.)

19.10.2022

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Index : Yes/ No

Internet : Yes/No



WP No. 25090 of 2012

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WEB COPY



WP No. 25090 of 2012

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rsh/rk

WP No. 25090 of 2012

19.10.2022