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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

W.P.No.25522 of 2021
and
W.M.P.No.26948 of 2021

M.Sathish Kumar

.. Petitioner

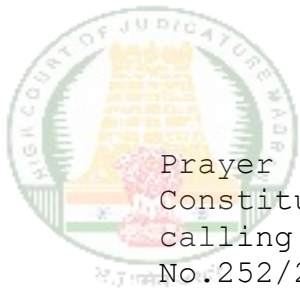
Vs.

1. The Chairman,
The Bar Council of Tamil Nadu & Puducherry,
Bar Council Building,
High Court Campus,
Chennai.
2. The Secretary,
The Bar Council of Tamil Nadu & Puducherry,
Bar Council Building,
High Court Campus,
Chennai.
3. The Registrar,
Disciplinary Committee,
The Bar Council of Tamil Nadu & Puducherry,
Bar Council Building,
High Court Campus,
Chennai.
4. The Disciplinary Committee No.VII,
The Bar Council of Tamil Nadu & Puducherry,
Bar Council Building,
High Court Campus,
Chennai.

5. R.Shylantheekumar

.. Respondent

* * *



Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the entire records in pursuant to the Resolution No.252/2021 dated 30.07.2021 passed by the third respondent disciplinary committee of Bar Council of Tamil Nadu and Puducherry and quash the same.

* * *

For Petitioner :Mr.T.P.Prabakaran
and Mr.D.Ajith Kumar

For Respondents :Mr.C.K.Chandrasekaran
Standing Counsel for RR1 to 4

Mr.V.Raman Reddy for R5

JUDGMENT

[Judgment of this Court was delivered by PUSHPA SATHYANARAYANA, J.]

A Member of the Bar Council of Tamil Nadu and Puducherry invoked the writ jurisdiction of this Court in this writ petition seeking to quash the Resolution No.252 of 2021 dated 30.07.2021 passed by the third respondent.

2. The short and relevant facts culled out from the affidavit filed by the petitioner are that the petitioner got himself enrolled with the Bar Council of Tamil Nadu and Puducherry (in short, "BCTNP") on 19.12.2007 and his enrollment number is Ms.No.3219/2007 and he has been practising before this Court ; that the father of the petitioner, who served in the Southern Railway, is a neighbour to the first respondent, who was also a Railway Employee ; that the first respondent gave a complaint dated 22.07.2020 against the petitioner before the BCTNP, which was assigned No.192/2020, and vide letter Confl.No.1700/2020, dated 17.08.2020, he was asked to submit comments on the same ; that the petitioner submitted his comments vide reply dated 28.08.2020, but without considering the same in its proper perspective, the petitioner was directed to appear before the fourth respondent on 20.11.2021 for hearing ; and that the petitioner laid this writ petition praying to quash the resolution taking cognisance of the complaint.

3. The case of the fifth respondent before the Bar Council and before this Court is that the petitioner's father Mr.A.Mohan and himself were neighbours for around 40 years and in



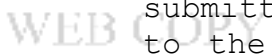
the year 2006, Mr.Mohan sold his house in favour of the fifth respondent vide sale deed No.6645/06, dated 10.01.2006 and on their request, in good faith, he allowed the petitioner family to live in the said house. Now the petitioner has been intimating him under the guise that he is an Advocate and refused to vacate and give possession of the property. When he approached the police officials, he was told that it was a civil matter. Since the fifth respondent wanted to perform his son's marriage and wanted the premises for their use, he asked the petitioner's father to vacate the house, which proved futile. In such backdrop, he filed the subject complaint before the BCTNP, inter alia, requesting to find out the proper qualification of the petitioner.

4. Learned counsel for the petitioner contended that the fifth respondent is an usurious moneylender and the petitioner's father was one of the victims at his hands and the subject sale transaction is a sham and nominal one due to the said loan transaction and there is a long dispute in this regard between the parties. It is contended that the complaint is a false, fraudulent, baseless and vexatious one and the petitioner has role to play in the entire episode. Learned counsel submitted that instead of taking up appropriate civil proceedings, without any basis, the fifth respondent filed the complaint, which led to the passing of the impugned resolution.

4.1. Learned counsel for the petitioner relied on the following judgments in support of his contentions :

- i. Nandlal Khodidas Barot V. Bar Council of Gujarat and Others, 1981 SCC Cri 255 ;
- ii. N.S.Varadachari V. The Bar Council of Tamil Nadu rep. by its Secretary and Others, (W.P.No.14284 of 2000, dated 22.12.2010) ; and
- iii. Shakti Swarup Nigam and Another V. Bar Council of U.P. and Another, (Civil Misc.WP No.54966 of 2008, dated 11.12.2015).

5. Relying on the counter-affidavit filed by the second respondent, the learned Standing Counsel for the respondents 1 to 4 contended that the General Council of the BCTNP, after going through the papers, passed the resolution referring the complaint of the fifth respondent to the Disciplinary Committee for enquiry and disposal in terms of Section 35 of the Advocates Act, 1961 (in short, "the Act") and it is for the petitioner to raise all the grounds and grievances before the Disciplinary Committee, which would be considered in accordance with law, but without doing so, the petitioner rushed to this Court. It is his submission that the judgments referred



6. Learned counsel for the fifth respondent submitted that the petitioner has caused so much of mental agony to the fifth respondent using his professional capacity, which necessitated him to file the present complaint and there is nothing in the resolution passed by the BCTNP, as per Section 35 of the Act and prays to dismiss the writ petition.

8. Legal Profession is a learned, noble and independent profession. Many of Freedom fighters are Lawyers. It is said, "Law, without lawyer, loses its locomotion; lawyer, without law, misses its function". The lawyer is also called an Officer of Justice apart from Officer of the court. Every member of the Bar is an honourable person, because he has to discharge social responsibilities. An advocate should continue to enjoy the confidence not only of his client, but also of the Court and the Bar by his moral excellence. They should be responsible citizens.

10. Be that as it may, admittedly, there is no lawyer and client relationship between the petitioner and the fifth respondent and when there is no jural and fiduciary relationship, we wonder how the BCTNP is right entertaining the complaint of the fifth respondent. In this regard, the impugned resolution reads as follows :



prima facie case in the complaint. Hence, the complaint is referred to the Disciplinary Committee for enquiry and disposal."

11. As indicated earlier, in the given facts and circumstances of the case, the parties have to go before the civil forum to redress their remedies. But that has not been done in this case. The tenancy or the criminal disputes cannot be agitated before the Disciplinary Committee of the BCTNP. A perusal of the complaint of the fifth respondent clearly demonstrates that there is no professional misconduct. Curiously, the term "misconduct" has not been defined anywhere in the Act. A Full Bench of this Court in U.Dakshinamoorthy v. The Commission of Inquiry, 1980 (I) MLJ 121, has held as follows:-

"As misconduct has not been defined, we have to be guided by the meaning which is obtainable for the expression in ordinary and common parlance. 'Misconduct', as explained in the dictionary, is improper conduct. The propriety of the conduct of the Advocate is to be inquired into by the Commission. Whether it is professional misconduct or misconduct otherwise has to be judged by the Bar Council which has to be satisfied about the commission of such misconduct, as technically understood under the Advocates Act. Every misconduct may not be professional misconduct or other misconduct contemplated by Section 35."

12. In Ratnam v. Kanikaram A.I.R. 1965 S.C. 244, the Hon'ble Supreme Court has held as follows :-

"From the resume of the understanding of the term "professional or other misconduct", as it appeared in the Bar Councils Act, or, as it is found in the Advocates Act, it appears that the term 'misconduct' appearing in the respective sections has to be examined, with the lens of propriety, decency and worthy living and the fitness of the person to be on the rolls as an Advocate. It therefore appears that an accent is laid at every stage by the highest Court of our land on the fitness of the person to continue on the rolls, which has to be decided with reference to his conduct in general or with reference to his conduct touching upon a particular incident."

13. From the reading of the above judgments, it is clear that the misconduct has to be determined with reference to the conduct touching upon a particular incident.



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14. It is relevant to note that a Co-ordinate Bench of this Court in P.Krishnan V. The Bar Council of Tamil Nadu and Puducherry, Rep. by its Registrar and another, (W.P.No.10926 of 2021, dated 19.08.2021), issued the following guidelines :

"20. In the I.A. filed by the Second Respondent, without even numbering, without notice to the party to the disciplinary proceedings viz., the Petitioner, without disclosing any reason for transfer, the Chairman has passed the said order violating all the principles of law. Therefore, the transfer order is set aside and for the reasons stated above, this Court holds that,

(1) State Bar Council, as mentioned in Section 35 of the Advocate Act, would mean only the elected body.

(2) The definition of State Bar Council, as defined in Section 2(m) and as employed in Section 35 of the Advocate Act, would refer the elected members and the Advocate General, as stated in Section 3(2) (b) of the Advocate Act.

(3) At the risk of repetition, it is made clear that State Bar Council means the elected members of the entire Bar Council and the Advocate General and not any individual.

(4) The exercise of powers under the Advocates Act could be carried out only by the Bar Council viz., the collective body of elected members.

(5) If the chairman has got any power, it is only an administrative control as per the Resolution dated 17.02.1985, as approved by the Bar Council of India.

.....

22.(a) The transfer order dated 10.03.2021 is set aside as non speaking order, which has been passed without notice to the Petitioner, violating the principles of natural justice.

(b) The State Bar Council shall take a decision collectively after discussion as to whether comments have to be obtained from an individual Advocate based on the complaint received against the individual Advocate and thereafter, follow the procedure as per law, as to the commencement of disciplinary proceedings against an individual Advocate and it should only be done by the General Council.

(c) The Resolution dated 06.03.1994 not in accordance with the Advocates Act and is quashed.



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(d) I.A. filed by the Second Respondent making allegations against the Disciplinary Committee VI shall be numbered and after issuing notice to the Petitioner, the General Council shall decide about the transfer.

(e) The power of transfer from one Committee to another Committee shall lie only with the General Council alone and not with any individual and the said procedure should be followed scrupulously, as violation of the same would amount to contempt of Court, for which, the aggrieved party could initiate contempt proceedings before the Court."

15. If the case on hand is considered with the touchstone of the above principles, we are of the view that the resolution passed by BCTNP is unsustainable in the eye of law and it deserves to be dismissed. Besides, the above judgment was rendered on 19.08.2021 and the impugned resolution is prior to that, i.e., dated 30.07.2021.

16. Accordingly, this writ petition is allowed and the impugned resolution and the consequential action of the BCTNP is quashed. Needless to say it is open to the fifth respondent to workout his remedy in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

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2. The Secretary,
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W.P.No.25522 of 2021

AK(CO)
CB(09/03/2022)