

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.225 of 2022

In
Civil Writ Jurisdiction Case No.4448 of 2022

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Shahnaz Fatma D/o Late S.M. Jameel Ahmad, R/o Batau Kuan, Post -
Begampur, P.S. - Chowk, Patna City, District - Patna.

... .. Petitioner/s

Versus

1. Bihar State Bar Council through Officiating Secretary, at Patna, address -
2nd Floor, Bar Council Building near Patna High Court, P.S. Kotwali,
District Patna.
2. Disciplinary Committee, Bar Council of India, through Officiating Secretary,
address - 21, Rouse Avenue Institutional Area, Near Bar Bhawan, New Delhi
110002.
3. Bihar School Examination Board (Senior Secondary) through its secretary,
Patna.
4. The State of Bihar through the director Secondary Education, Govt. of
Bihar, Patna.
5. The Chairman Bar Council of India, Rose Avenue Institutional area, nar Bal
Bhavan, New Delhi 110002.
6. Prem Kumar Jha, Member, Bihar State Bar Council, address - 2nd Floor, Bar
Council Building near Patna High Court P.S. Kotwali, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Shahnaz Fatma (In Person)
For the Amicus Curiae	:	Mr. Amit Srivastava, Sr. Adv.
For the BSBC	:	Mr. P.K.Shahi, Sr. Adv.
		Mr. Shantanu Kumar, Adv.
For the BSEB	:	Mr. Gyan Shankar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

7 14-03-2023 The present review petition has been filed seeking review
of the order dated 30.6.2022, passed by this Court in CWJC



No. 4448 of 2022, whereby and whereunder the writ petition was disposed off as not pressed, however, with liberty to the petitioner to avail such other remedies as are available under the law.

The learned counsel for the petitioner has submitted that the petitioner had approached the Hon'ble Apex Court, by filing a special leave petition bearing SLP (Civil) No. 14511 of 2022 and the Hon'ble Apex Court, by an order dated 5.9.2022, has disposed off the said special leave petition, by granting liberty to the petitioner to seek a review before the High Court of the order dated 30.6.2022, passed in CWJC No. 4448 of 2022, relevant portion whereof is reproduced hereinbelow:-

“2. The order of the Bar Council of India in Removal Proceedings No. 55 of 2021 dated 18 December 2021 was on a reference under the proviso to Section 26(1) of the Advocates Act 1961' sent by the Bihar State Bar Council with regard to the enrollment of the petitioner. The petitioner was enrolled with the Bihar State Bar Council on 13 February 2008 against enrollment No. 235/2008. The first paragraph of the order of the Bar Council of India contains the following recital:

“1. By this order, we propose to answer the reference/letter under the proviso to Section 26(1) of the Advocates Act, 1961



sent by Bihar State Bar Council with regard to the enrollment of Ms. Shahnaz Fatma enrolled with Bihar State Bar Council on 13.2.2008 against enrolment No. 235/2008."

3. The State Bar Council referred the matter to the Bar Council of India on the validity of the qualification of the petitioner, who claims to have done her matriculation from Prayag Manila Vidyapeeth and purportedly holds the Vidya Vinodini certificate.

4. The Bar Council of India, by its order dated 18 December 2021, held that the enrollment of the petitioner as an advocate was improper:

"21. We therefore, accept the submissions made on behalf of State Bar Council of Bihar that the name of Ms. Shahnaz Fatma is liable to be removed from the roll of Advocates maintained by Bihar State Bar Council because she got the said enrolment by misrepresentation as to an essential fact and also by fraud and undue influence which is discernible from the resolution dated 30.1.2008 of Enrolment Committee and the act of scoring out portion of a resolution and the recommendation made by Shri S.N.P. Sinha on her application dated 30.8.2007.



We also recommend that other candidates with similar non-eligibility enrolled by Bihar State Bar Council be also proceeded with under proviso to Section 26(1) of the Advocates Act, 1961.

We answer this reference accordingly and request and recommend to the Bar Council of India to direct the Bihar State Bar Council to remove the name of Ms. Shahnaz Fatma enrolled against Enrolment No. 235/2008 from the roll of Bihar State Bar Council with immediate effect and inform all concerned about the same by getting notification issued in terms of this reference order. Needless to state that as a consequence of removal of her name from the roll of advocates maintained by Bihar State Bar Council, Ms. Shahnaz Fatma shall also lose her membership of State Bar Council and all its Committees and, would also be required to surrender her original enrolment certificate and I-card issued to her by Bihar State Bar Council to the Secretary, Bihar State Bar Council after receipt of this reference order."

5. Before the High Court, it appears that the petitioner sought liberty to withdraw the writ petition on the ground that an appeal would lie to



this Court under Section 38 of the 1961 Act.

6. The submission which has been urged on behalf of the petitioner is that an appeal under Section 38 of the 1961 Act lies against an order passed by the Disciplinary Committee of the Bar Council of India under Sections 36 or 37. Section 36(1) deals with the power of the Disciplinary Committee of the Bar Council of India where a person whose name is not entered on any State roll is guilty of professional misconduct. Section 37(1) provides for the appellate jurisdiction of the Bar Council of India. In the present case, it has been submitted that since the order of the Bar Council of India was passed on a reference under the proviso to Section 26(1), an appeal under Section 38 would not lie before this Court and, hence, the petition under Article 226 of the Constitution was maintainable. On this ground, it was urged that a concession was made by the petitioner, it would be appropriate to remit back to the High Court since the concession proceeds on an incorrect appreciation of the legal position.

7. Ordinarily, we would have issued notice in these proceedings to hear the Bar Council of India. However, we find from the record that the name of the petitioner was struck off from the rolls after she practised for nearly thirteen years, as submitted on her behalf. In this view of the matter, we are of the view that the better course of



action would be to permit the petitioner to seek a review before the High Court of the order dated 30 June 2022 in CWJC No 4448 of 2022.”

The learned counsel for the parties have jointly submitted that a bare perusal of the aforesaid order dated 5.9.2022, passed by the Hon’ble Supreme Court of India, would show that the Hon’ble Apex Court is of the prima facie view that since the order of the Bar Council of India dated 18.12.2021 was passed, in the case of the petitioner, on a reference under the proviso to Section 26(1) of the Advocates Act, 1961, an appeal under Section 38 of the 1961 Act would not lie before the Hon’ble Apex Court, hence, a petition under Article 226 of the Constitution of India would be maintainable. Thus, it is submitted by the learned counsel for the parties that the writ petition, filed by the petitioner, should be restored to its original file and heard on merits.

Having regard to the facts and circumstances of the case and considering the aforesaid order dated 5.9.2022, passed by the Hon’ble Supreme Court of India as also considering the submissions made by the learned counsel for the parties, I deem it fit and proper to restore the aforesaid writ petition bearing CWJC No. 4448 of 2022 to its original file and direct for listing of the same forthwith for admission.



The review petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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