

OD 1

WPO/1155/2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

NILADRI DHAR
VS
BAR COUNCIL OF INDIA, THROUGH ITS DISCIPLINARY
COMMITTEE AND ANR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 12th June, 2023.

Appearance:
Mr. Niladri Dhar appears in person.

Mr. Avinash Kankani, Adv.
. . .for the Bar Council of India.

The Court: The petitioner, appearing in person with leave of Court, submits that despite the petitioner having lodged a complaint against a member of the Bar practising in the State of West Bengal, the State Bar Council has not taken any positive steps for adjudicating the same till date. It is submitted that already 17 months have elapsed after the lodging of the complaint. However, only upon getting notice of the filing of the writ petition did the State Bar Council fix another date, purportedly for a hearing on the same.

Even otherwise, it is argued, Section 36B of the Advocates Act, 1961 clearly mandates that the disciplinary committee of the State Bar Council shall dispose of the complaints received by it under Section 35 expeditiously, and in each case,

the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council. It is further provided in sub-section (1) of Section 36B of the 1961 Act that, failing the above, the proceedings shall stand transferred to the Bar Council of India, which may dispose of the same as if it were a proceeding withdrawn for enquiry under sub-section (2) of Section 36 of the Act.

In the present case, the petitioner contends that he has been running from pillar to post with his complaint. However, as of today, neither the complaint has been disposed of by the State Bar Council nor has the Bar Council of India taken up the issue.

The petitioner cites a judgment of the Supreme Court reported at (2017) 5 SCC 465 *Ajitsinh Arjunsinh Gohil versus Bar Council of Gujarat and Anr.* for the proposition that the time limit stipulated in Section 36B(1) of the 1961 Act is mandatory in nature.

The petitioner also cites a Division Bench judgement of this Court reported at (2000) 1 CALLT 77 (HC) *Sri Brojo Gopal Bhattacharyya versus Bar Council of West Bengal & Ors.* as well as another judgment of the Supreme Court in *K. Anjinappa versus K.C. Krishna Reddy*, in support of his contentions.

Despite several opportunities, the Bar Council of West Bengal is not being represented on any of the dates of the hearing of this matter. However, the Bar Council of India is represented today through counsel.

The provisions of Section 36B of the 1961 Act, as rightly argued by the petitioner, specifically stipulate a limited time for disposal of any complaint lodged before the State Bar Council.

That is all the more so since there ought to be transparency in such proceedings being conducted by any statutory body, which represents a particular association of members, to prove that justice is being done and also appears to have been done.

Be that as it may, even the judgments of the Supreme Court as cited by the petitioner are categorical on the score that the Bar Councils are required to decide and dispose of the complaints received by them under Section 35 expeditiously, within the mandated period as stipulated under Section 36B.

In the present case, much time has elapsed, even after the expiry of the mandatory statutory period, without any disposal of the petitioner's complaint.

In such view of the matter, WPO 1155 of 2023 is allowed, thereby directing respondent no.1, that is, the Bar Council of India, to take up the complaint lodged by the petitioner before the West Bengal Bar Council, as referred to in the body of the present writ petition, and upon giving adequate opportunity of hearing to all concerned, including the petitioner and the person against whom the complaint has been lodged, to decide the said complaint in accordance with law as expeditiously as possible, within the provisions of Section 36(2) of the Advocates Act, 1961. It is expected that such adjudication shall be concluded within an outer limit of six months from this date.

It is, however, made clear that this Court has not gone into the merits of the allegations and counter-allegations made by the petitioner and/or the respondents.

The petitioner shall serve copies of all relevant pleadings and documents in connection with his complaint on respondent no.1, the Bar Council of India, within three weeks from the date.

Parties shall act on the server copy of this order for the purpose of compliance, without insisting on a prior production of the server copy.

(SABYASACHI BHATTACHARYYA, J.)

SP/