



W.P.No.20901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

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1.P.Nandakumar

Chairman,

Joint Advocates Association Council

of Tamil Nadu & Puducherry, Chamber No.314,

Combined Court Complex,

Coimbatore - 641 018.

2.The Joint Advocates Association Council

of Tamil Nadu & Puducherry,

Represented by its General Secretary,

Mr.K.Pannir Selvam,

No.6, Huzur Road, Opp. Police Commissioner Office,

Coimbatore - 641 018.

... Petitioners

Vs.

1.The Bar Council of Tamil Nadu & Puducherry,

Rep. by its Registrar, Disciplinary Committee,

High Court Campus,

Chennai - 600 104.

2.The Secretary,

Bar Council of Tamil Nadu & Puducherry,

Chennai - 600 104.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, to call for the records relating to DCC No.149/2023, dated 07.06.2023 and Resolution No.318 of 2023, dated 28.04.2023 passed by the respondents and quash the same.

For petitioners : Mr.PVS. Giridhar, Senior Advocate
for Mr.Nirmal M.Kumar

For respondents : Mr.C.K.Chandrasekar

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

The prayer made in this writ petition is to issue a writ of certiorari, to call for the records relating to DCC No.149/2023 dated 07.06.2023 as well as the Resolution No.318 of 2023, dated 28.04.2023 passed by the respective respondents 1 and 2 and quash the same.

2. According to the petitioners, they are the Chairman and General Secretary of Joint Advocates Association Council of Tamil Nadu and Puducherry (in short, "the JAAC"). The JAAC is registered under the provisions of the Tamil Nadu Societies Registration Act and the Dindigul Bar Association ("DBA") is one of the members of JAAC. It is further averred in the affidavit filed in support of this petition that certain advocates (40 persons) in Dindigul have petitioned the Bar Council of Tamil Nadu and Puducherry stating that they wanted to form a rival



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association to the existing Dindigul Bar Association (DBA), in the name and style of Dindigul Advocates Welfare Association, as if they were not being admitted as members of DBA. Pursuant to the same, five members of the Bar Council visited the DBA on 08.07.2022 and interacted with the members and office bearers of the Dindigul Bar Association. While so, three members adopted a peremptory stance, emphasizing that 40 candidates had to be admitted to DBA, failing which, rival association would be granted recognition. In response, the office bearers of the DBA pointed out that none of the said 40 persons had submitted any application for admission to the Association. On the other hand, one of the visiting members raised objection and stated that once an Advocate enrolls before the Bar Council, the Association is bound to grant him/her membership without examining his or her credentials or suitability. Following the said events, the general body meeting of the DBA was held on 14.07.2022, in which, a resolution was passed about the peremptory conduct of the visiting Bar Council members. Thereafter, the members of the DBA who attended the meeting of the JAAC held on 27.08.2022 at Trichy, complained about the visit of 5 members committee of the Bar Council to their Association on 08.07.2022 and their act of threatening the members of DBA and directing them to admit the candidates who obtained degrees from other States, without any enquiry. Based on the same, a resolution was passed in the JAAC meeting in the following terms:

"The assertion of the Bar Council that once advocates are enrolled in the State Bar Council, the Bar Association has to admit them



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to membership automatically without any further enquiry is to be condemned. The independence of the Bar Associations has to be safeguarded."

While so, *vide* communication dated 09.12.2022, referring to the visit of a Committee of the Bar Council to the DBA, the Bar Council informed that *"the Association has failed to obey the instruction given by the Committee"* and hence, they gave a report recommending grant of recognition to the new Dindigul Advocates Welfare Association and about the non-functioning of the DBA. The said recommendation of the Bar Council was discussed by the members of JAAC in its meeting held on 27.08.2022 and condemned the decision of the Bar Council and the Committee, *"as if they interfered and threatened the office bearers of the DBA without verifying real facts"*. In pursuance of the same, the first petitioner was asked to submit explanation as to under what authority he has passed resolution criticising the Bar Council and publishing the same through social media without any basis. Similar show cause notice was also issued to the Dindigul Bar Association. The first petitioner submitted his explanation on 19.12.2022. Being dissatisfied with the same, the respondent authorities sent a communication dated 18.03.2023 informing that the General Council passed a resolution calling for further explanation from the first petitioner. In response to the same, the first petitioner submitted another explanation on 06.04.2023 and requested to drop the proceedings. However, on 07.06.2023, the first petitioner received a notice indicating that a complaint received on 08.04.2023 against him,



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had been referred to the Disciplinary Committee of the Bar Council, invoking Section 35 / 36 of the Advocates Act, 1961 and a hearing had been fixed at 3.00 pm on 23.06.2023. Accordingly, the first petitioner appeared before the Disciplinary Committee on 23.06.2023 and requested copies of complaint dated 08.04.2023 and Resolution No. 318/2023 dated 28.04.2023, which were furnished to him. The hearing of the case was adjourned to 14.07.2023. In the mean while, the present writ petition came to be filed to quash the said proceedings.

3. It is submitted by the learned senior counsel for the petitioners that the resolution does not disclose any misconduct within the meaning of Section 35 of the Advocates Act, 1961, or any of the provisions of the Bar Council of India Rules pertaining to Standards of Conduct in Chapter II. That apart, the impugned orders are without any specific instances that could indicate misconduct on the part of the first petitioner. The learned counsel would further submit that the impugned resolution is in violation of Section 35 of the Act, which empowers the State Bar Council to refer a case for disposal of its disciplinary committee only when it "has reason to believe" that any advocate has been guilty of professional or other misconduct. The Supreme Court has held in several cases, including ***Nandilal Kodhidas Vs. Bar Council of Gujarat [1980 (Supp) SCC 318]*** and ***Bar Council of Maharashtra Vs. M.V.Babholkar (II), [1976 2 SCC 291]*** that the requirement of 'reason to believe' is essentially a barrier against



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frivolous enquiries. In the present case, there is no consideration in terms of Section 35 or the Standard of Conduct Rules and there is no finding of a prima facie case.

4. Continuing further, the learned senior counsel appearing for the petitioners submitted that Section 6(1)(dd) of the Act mandates the Bar Council to promote the growth of Bar Associations for the purpose of effective implementation of welfare schemes, and no specific power or function is assigned to the Bar Council concerning internal administration of the Bar Associations. Additionally, the impugned proceedings run contrary to the function of the State Bar Council, outlined in section 6(1)(d) of the Act, which is to safeguard the rights, privileges, and interests of the Advocates on its roll. It is also submitted that Section VI of the Code of Conduct Rules 2021, as referred to by the respondent authorities, applies solely to Bar Council members and not to Bar Association members. It is further highlighted that the first petitioner holds the position of Chairman, presiding over the JAAC meeting, in which, an unanimous resolution was passed and hence, no misconduct can be attributed to the petitioner in an individual capacity, and such misconduct is not identified in the impugned resolution. It is ultimately submitted that Rule 7 of the Certificate and Place of Practice Rules stipulates that if the Bar Council becomes aware that any office bearer of a Bar Association is involved in making unnecessary, baseless,



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and deliberate protests or objections during the identification process of fake persons, proceedings can only be initiated by a Tribunal consisting of a former Judge of the High Court and two other members, rather than the Disciplinary Committee of the Bar Council. However, a perusal of the impugned order would disclose that the members who complained against the petitioner acted out of anger, feeling slighted and failing to rescue themselves, have tainted the impugned proceedings with bias. With these submissions, the learned senior counsel appearing for the petitioner prayed to allow this writ petition by setting aside the orders impugned herein.

5. *Per contra*, the learned counsel appearing for the respondents submitted that after elaborate discussion, the Bar Council has *inter alia* passed a resolution to issue show cause notice to the first petitioner and the President / Secretary of the Dindigul Bar Association calling for their explanation. Accordingly, the Bar Council has issued show cause notice to the first petitioner, who was the President of JAAC and to the President and Secretary of Dindigul Bar Association vide ROC.Nos.2448 & 2449 of 2022 dated 09.12.2022, to which, the petitioners submitted their respective replies. Thereafter, the same were placed before the General Council meeting held on 03.02.2023, in which, it was resolved to accept the explanation received from the President / Secretary, Dindigul Bar Association and close the issue at present, since it was stated by them that they



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have not taken the issue to the JAAC, who is the 2nd petitioner herein and the first petitioner on his own has taken the issue and condemned the decisions of the Bar Council and hence, it was further resolved to call for proper explanation from the first petitioner. Being dissatisfied with the further explanation submitted by the first petitioner, it was unanimously resolved to refer the matter to the Disciplinary Committee No.I for enquiry and disposal by resolution No.318 of 2023 dated 28.04.2023.

6. The learned counsel appearing for the respondent authorities referred to Section VI A of the Code of Conduct and Disqualification for Members of Bar Councils (under Section 49(1)(a) and (ab) of the Advocates Act, 1961), and submitted that the members of the Bar Council have a duty to uphold the dignity and reputation of the Bar Council and its members. It is further submitted by the learned counsel that the first petitioner is a practising advocate and is aware of the provisions of the Advocates Act, 1961 and the Bar Council of India Rules and he should have avoided meetings and undue criticism of the Bar Council decisions and for the same, he could not claim that it was made on behalf of the Association (JAAC). Therefore, the learned counsel submitted that the act of the first petitioner is in clear violation of the provisions of the Bar Council of India Rules and therefore, he has been rightly subjected to disciplinary proceedings under section 35 of the Advocates Act, 1961. It is also submitted that an inbuilt statutory remedy under section 48A of the Advocates Act, 1961, is available to the



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first petitioner against the decision of the disciplinary proceedings and without exhausting the same, he has preferred this writ petition, which is not maintainable. Therefore, the learned counsel sought to dismiss this writ petition.

7. Heard the learned counsel on either side and perused the materials available on record.

8. In the case on hand, pursuant to the visit of 5 members of the Bar Council to the Dindigul Bar Association on 08.07.2022 in connection with the grant of recognition of Dindigul Advocates Welfare Association, the petitioners had convened a meeting and passed certain resolutions not to grant approval to any other associations in Dindigul and also criticized the decision of the Bar Council that they had threatened the office bearers of the Dindigul Bar Association (DBA) to admit 40 candidates, without verifying their credentials and suitability, and circulated the said resolution through social media. In view of the same, the petitioners were subjected to the disciplinary proceedings under sections 35 and 36 of the Advocates Act, 1961 for their professional misconduct. The case is now pending before the Disciplinary Committee No.I for enquiry and disposal.

9. Though the learned counsel for the petitioners reiterated the grounds raised in the writ petition, during the course of the argument, it is submitted that the first petitioner in his capacity as Chairman of JAAC, has passed the resolution



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dated 08.07.2022 condemning the actions of five members of the Bar Council of Tamil Nadu & Puducherry in the Dindigul Bar Association, and never had the intention to demean the State Bar Council as an Institution or its members. The learned counsel further submitted that the first petitioner undertakes not to pass any resolution demeaning the Bar Council as an institution or its members in future. In support of the same, the learned counsel produced a copy of the affidavit dated 13.10.2023 of the first petitioner filed before the Disciplinary Committee No.I.

10. This court is of the view that this matter involves certain disputed facts and issues that need to be resolved only by the Disciplinary Committee after enquiry, on the basis of the materials placed by the parties. Therefore, leaving it open to the disciplinary committee to decide the disciplinary case registered against the petitioners, this court directs it to take into consideration the affidavit dated 13.10.2023 filed by the first petitioner herein, before taking a decision.

11. With the aforesaid observation, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]
16.10.2023

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Index: Yes / No.

Speaking order/ Non-speaking order



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Neutral Citation: Yes / No.

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To

- 1.The Registrar, Disciplinary Committee,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus,
Chennai - 600 104.
- 2.The Secretary,
Bar Council of Tamil Nadu & Puducherry,
Chennai - 600 104.



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