



W.P.No.30262 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

W.P.No.30262 of 2023

and

W.M.P.Nos.29864 and 29865 of 2023

1.T.Sundar Rajan
2.Bhargavi Sundar Rajan

... Petitioners

Vs.

1.Bar Council of Tamil Nadu & Puducherry,
Represented by its Secretary,
High Court Campus, Chennai - 600 104.

2.The Disciplinary Committee No.IV,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus, Chennai - 600 104.

3.K.Jayalakshmi
4.R.Susheela

5.The Bar Council of India,
Rep. by its Secretary,
21, Rouse Avenue Institutional Area,
Near Bal Bhawan, New Delhi - 110 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus or any other writ, order or direction in the nature of a writ, to transfer the Disciplinary Proceedings D.C.C.No.62 of 2023, pending on the



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file of the respondents 1 and 2 to the file of the fifth respondent or to the Bar Council of Karanataka or Andhra Pradesh for continuation of enquiry.

For Petitioners : Mr.R.Thiagarajan
Senior Counsel
for Mr.S.Gunaseelan

For Respondents : Mr.C.K.Chandrasekhar
Standing Counsel for R1, R2 and R5

Mr.P.Satheesh Kumar for R3 and R4

ORDER

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

Seeking transfer of the case in DCC No.62 of 2023 from the file of the respondents 1 and 2 to the file of the 5th respondent or to the Bar Council of Karnakata or Andhra Pradhesh, the petitioners who are practising advocates, have preferred this writ petition invoking the jurisdiction under Article 226 of the Constitution of India.

2. The respondents 3 and 4 herein made a complaint dated 03.11.2022 before the Bar Council of Tamil Nadu and Puducherry, alleging that without proper authorization and by forging their signatures in the vakalat in collusion with their brothers viz., V.Palanivel and V.Soundararajan, the petitioners appeared for them in C.R.P.Nos.2564 and 2565 of 2017 and thereby, committed professional misconduct. The said complaint was taken on file as Complaint No.508 of 2022,



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which, *vide* resolution no.67 of 2023 dated 03.02.2023, was forwarded to the disciplinary committee for enquiry and the same was numbered as DCC No.62 of 2023. Pending the same, the petitioners preferred WP.No.10653 of 2023 seeking to quash the said disciplinary proceedings and by order dated 06.04.2023, the writ petition was disposed of, granting liberty to the petitioners to raise all the grounds along with the material documents before the disciplinary committee.

3. According to the petitioners, there are various proceedings pending before the civil court between the complainants and their brothers, in respect of their family properties. The brothers preferred suits in O.S.No. 610 of 2022 and O.S.No.208 of 2023 before the District Court, Chengalpet, against their sisters / 3rd and 4th respondents, for specific performance of the family arrangement, whereas the fourth respondent has filed a suit in O.S.No. 142 of 2023 against her brother V.Palanivel and others, in which, the Chairman of the Tamil Nadu and Puducherry Mr.P.S.Amalraj appears for her. In such circumstances, the petitioners have a reasonable apprehension that there may not be any fair justice and there is a likelihood of bias in the disciplinary proceedings. It is also alleged that the complaint is being proceeded by the Disciplinary Committee, with undue haste and without giving reasonable opportunity to the petitioners to put forth their objections. Therefore, this writ petition came to be filed for the relief as stated *supra*.



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4. The learned senior counsel appearing for the petitioners would submit that there is a dispute between the respondents 3 and 4 / complainants and their siblings, namely Mr. V. Palanivel, Mrs. Selvarani, Mr.V.Soundararajan, and Mrs. Vijayakumari, who are the 1st, 2nd, 4th and 5th petitioners in C.R.P. Nos. 2564 and 2565 of 2017. This dispute arose, when a release deed was sought by the brothers as part of a family arrangement. In response, the respondents 3 and 4 alleged that their brothers, Mr.V.Palanivel and Mr.V.Soundararajan, had forged their signatures in the vakalats and given the same to the petitioners for filing the civil revision petitions. However, when the respondents 3 and 4 made a request, the petitioners have given a change of vakalat, and a new counsel, Mr.P.Satheesh Kumar, was engaged in the said civil revision petitions. It is further submitted that Mr.P.Satheesh Kumar, along with respondents 3 and 4, approached the petitioners outside the court hall and requested them to mediate and encourage their clients, Mr.V.Palanivel and Mr. V. Soundararajan, to settle their shares in the family properties. The petitioners, however, declined to interfere with the dispute by suggesting that the siblings should discuss among themselves to resolve their differences and reach an amicable settlement. It is further stated that Mr.P.S.Amalraj, Chairman of the Bar Council of Tamil Nadu and Puducherry, and Mr. P. Satheesh Kumar, who is a member of the Advisory Board of an NGO called the People's Right Foundation, are exerting pressure and intimidating the petitioners to settle all the claims made by the respondents 3 and 4; and that,



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they have caused a false complaint to be filed against the petitioners through the respondents 3 and 4. Therefore, the learned senior counsel submitted that the disciplinary proceedings may not be conducted in an orderly manner and hence, it may be transferred to either BCI or any Bar Council of other States.

5. The learned counsel appearing for the respondents 3 and 4 drew the attention of this court to the detailed counter affidavit filed by the respondents 3 and 4, and stoutly denied the allegations raised in the writ petition. According to the learned counsel, in order to avoid and protract the disciplinary proceedings pending before the second respondent, the petitioners have preferred this writ petition and hence, the same may be dismissed as devoid of merits.

6. The learned counsel for the respondents 1 and 2 filed a report of the Bar Council of Tamil Nadu and Puducherry, in which, in paragraph 7, it was stated as follows:

"7.It is submitted that the Bar Council initiated Disciplinary Proceedings against the Writ Petitioners / Respondent Advocates in D.C.C.No.62/2023 on the file of the Disciplinary Committee No.IX. While the matter was pending before the Committee, the said Disciplinary Committee has referred the matter to the General Council to transfer the case from to some other Committee due to some inconvenience felt by the Members. Subsequently, the matter was placed before the General Council held on 28.07.2023 and after deliberation, the matter was transferred to the Disciplinary Committee No.IV vide Resolution No.581 of 2023 dated 28.07.2023. The time limit to conclude the enquiry ends on 02.11.2023."



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The learned counsel further submitted that in DCC No.62/2023, documents were marked on the side of the complainants and the cross examination also commenced. While so, the complainants had filed a petition to reopen the evidence of CW1, which was also allowed. It is also submitted that in the light of the order of the Hon'ble supreme court in **Charanjeet Singh Chnderpal v. Vasant D. Salunkhe & Ors in** Conmt.Pet.(C) No.309 of 2022 in CA No.7478 of 2019 dated 29.09.2022, wherein, it was reiterated that all concerned State Bar Councils, before whom the complaints are pending for more than one year from the date of filing, shall stand transferred to the Bar Council of India, the Disciplinary Committee has taken all the steps to complete the case within the time limit by giving adequate opportunity and following the principles of natural justice and the case has been posted for hearing on 01.11.2023. Thus, according to the learned counsel, the petitioners / advocates had come up with this writ petition making unwanted allegations against the disciplinary committee as well as the Chairman of the Bar Council to drag the proceedings. That apart, under section 48A of the Advocates Act, as against the decision of the Bar Council, an aggrieved person may prefer revision and the petitioners without exhausting the statutory remedy, have filed this writ petition, which will have to be dismissed.

7. Heard the learned counsel appearing for all the parties and also perused the materials available on record.



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8. It is evident from the pleadings as well as the documents placed before this court that the complainants / respondents 3 and 4 had lodged complaint under section 35(1) of the Advocates Act, 1961, on 03.11.2023 against the petitioners / advocates, for the alleged professional misconduct and the same is pending in DCC No.62 of 2023 before the Disciplinary Committee No.VI. Earlier, the petitioners approached this court by filing WP.No.10653 of 2023, seeking to quash the said complaint lodged against them and by order dated 06.04.2023, this court considering the stage of the complaint that it was transferred to the disciplinary committee, disposed of the said writ petition by granting liberty to the petitioners to raise all the grounds before the same. Admittedly, there are various civil disputes between the complainants / respondents 3 and 4 and their siblings; and that, the fourth respondent has engaged a member of the Disciplinary committee to appear for her before the civil court. The petitioners have now preferred this writ petition, raising apprehension that there may not be fair justice in the disposal of the complaint lodged against them. The respondents denied the allegations raised in the writ petition and refuted the relief sought therein, by stating that the same is only to protract the disciplinary proceedings. Irrespective of the submissions made by the parties, this court is of the view that there are serious allegations levelled against the petitioners for professional misconduct and hence, the same have to be dealt with, as per the procedure contemplated under the law.



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9. It is well settled that the Bar Councils are enjoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus, every State Bar Council and the Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practice granted under the Act is not misused or abused by a person who is enrolled as an advocate. The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members, but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized [Refer: *Indian Council of Legal Aid and Advice v. Bar Council of India* (1995) 1 SCC 732].

10. The Hon'ble supreme court in *K.Anjinappa v. K.C.Krishna Reddy and another in C.A.No.7478 of 2019 dated 17.12.2021*, after taking into consideration, section 35 and section 36B of the Advocates Act, directed the Bar Council of India to issue appropriate directions to the concerned State Bar Councils to decide and dispose of the complaints within a period of one year from the date of receipt of such complaints / proceedings and on the failure to dispose of the same within a period of one year, all such complaints be transferred to BCI for its decision. The relevant passage of the said order is usefully quoted below:



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"12. Therefore, we direct the Bar Council of India to finally dispose of the transferred complaints, the particulars of which are referred to hereinabove expeditiously but not later than one year from today and for which even the Disciplinary Committee of the Bar Council of India may hold circuit hearings.

12.1 We also direct the respective State Bar Councils to decide and dispose of the complaint(s) received by it under Reason:

Section 35 expeditiously and to conclude the same within a period of one year from the date of receipt of the complaint as mandated under Section 36B of the Advocates Act.

12.2 Only in exceptional case and for the reasons to be recorded where it is found that for valid reasons, the proceedings could not be completed within the period stipulated under Section 36B of the Advocates Act, then and then only such proceedings shall stand transferred to the Bar Council of India and on such transfer the Bar Council of India shall also dispose of the such transferred proceedings/complaints within a period of one year from receipt of such transferred proceedings.

13. Having regard to the aforesaid provisions and bearing in mind the fact that 1273 complaints (minus 27 complaints which are disposed) are pending before the Bar Council of India, it is just and necessary that a mechanism be found for disposal of the said complaints in accordance with the procedure prescribed.

For an efficient and quick disposal of the complaints by the Bar Council of India vis-à-vis those complaints which have been transferred to it as per section 36B of the Act, the Bar Council of India may consider empanelling experienced and seasoned advocates and/or retired judicial officers to act as Inquiry Officers where an inquiry would be necessitated. On such inquiry being concluded the report of the Inquiry Officers could be received by the Bar Council of India. On consideration of the said inquiry report, the Bar Council of India could pass appropriate orders on the complaint.

The aforesaid suggestion is being made bearing in mind the number of complaints that are pending before Bar Council of India, that is, the transferred complaints which would act as the disciplinary authority on such transfer as it would be highly impossible for the said complaint to be disposed of within a reasonable time if the inquiry is also to be conducted by the Bar Council of India.

Hence the Bar Council of India may issue suitable directions to the State Bar Council to enlist a panel of Inquiry Officers for the purpose of conducting the inquiry on behalf of the Bar Council of India in the



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respective States itself and on conclusion of the said inquiry to transmit the inquiry report to the Bar Council of India for enabling it to take it further action in the matter.

This would also enable the complainants and the concerned advocates against whom the complaints are made to appear before the Inquiry Officers wherever such an inquiry is instituted in the State where the complaint has been filed. This would also remove the difficulties caused to the parties to travel from various parts of the country to Delhi for appearing before the inquiry, if any, to be conducted on the complaints filed by the complainants.

Further and as directed hereinabove, the Bar Council of India to also issue suitable directions to the State Bar Council to conclude the proceedings from the complaints filed against the advocates within a period of one year since the intention of the Parliament appears to be to decide on the said complaint within the said period which is a reasonable period. The object and purpose of section 36B of the Act is not to encourage delay in the disposal of the complaint so as to enable the complaints to be transferred to the Bar Council of India by operation of law and thereby increase the burden on the All India body and at the same time create a leeway for the State Bar Council to not act on the complaints and to simply wait for the passage of time so that by operation of law the said complaint would stand transferred to the Bar Council of India.

In fact, section 36B of the Act mandates that there should be no tardiness by the State Bar Council in completion of the proceedings on the complaints received by them within a period of one year as stated in the said provision. When the number of complaints transferred from the State Bar Councils to Bar Council of India is noted from the aforesaid statistics, it implies that the States Bar Council have not been discharging their duties by not disposing the complaints within a period of one year as provided under section 36B of the Act.

Further in order to enable the State Bar Council to dispose of the complaints within a period of one year as provided under section 36B of the Act, it is incumbent for the respective disciplinary committees of the State Bar Councils meet on a regular basis.

The State Bar Council could also enlist a panel of Inquiry Officers who could be entrusted with the conduct of the inquiry as and when the same is necessitated on a complaint.



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The disciplinary committee of the State Bar Council on consideration of the said inquiry report may pass orders in accordance with the provision of section 35 of the Act.

11. Further, the Hon'ble Supreme Court in Conmt. Pet (C) No.309 of 2022 arising from the order made in C.A.No.7478 of 2019 as referred to above, it was emphasised that the State Bar Councils upon receipt of the complaint, have to decide and dispose it, within a period of one year as per section 36B of the Advocates Act and if the same could not be completed within the prescribed period, then, the proceedings have to be transferred to the Bar Council of India.

12. In the present case, the complaint was lodged by the respondents 3 and 4 against the petitioners on 03.11.2022 and the time limit for disposal of the same expires on 02.11.2023. In such circumstances, in the interest of all the parties, this court is of the view that the disciplinary proceedings initiated based on the said complaint, has to be transferred to the Bar Council of India, for disposal.

13. At this juncture, the learned counsel appearing for all the parties, in unison, submitted that the case may be transferred to the committee headed by Hon'ble Mr. Justice V.Bharathidasan (Retd.), Madras High Court, constituted by the Bar Council of India.



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14. In view of the above, without expressing any opinion on the merits of the case, we direct that the disciplinary proceedings in DCC No.62/2023 pending on the file of the Disciplinary Committee No. IV of the Bar Council of Tamil Nadu and Puducherry, be transferred to the BCI committee headed by Hon'ble Mr. Justice V.Bharathidasan (Retd.), Madras High Court, for enquiry and disposal, as expeditiously as possible.

15. With the above direction, the writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
01.11.2023

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

To

- 1.The Secretary,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus, Chennai - 600 104.
- 2.The Disciplinary Committee No.IV,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus, Chennai - 600 104.
- 3.The Secretary,
Bar Council of India,
21, Rouse Avenue Institutional Area,
Near Bal Bhawan, New Delhi - 110 002.



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