



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-06-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

WP No.1904 of 2022

C.B.Suryanaraynan

.. Petitioner

-VS-

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

2.V.Nadanasigamani
Advocate (MS 908/1994),
31/118-A, Annai Theresa 2nd Street,
TNHB Phase III,
Sathuvachari,
Vellore-632 001.

3.S.Pandian,
Advocate (Ms 179/1994),
Balaji Nagar 2nd Street,
Opp:Government Hospital,
Madhanur-635 804,
Ambur Taluk,
Vellore District.

.. Respondents



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the records relating to the impugned orders dated 14.08.2021 made in the discharge petition in IA No.15 of 2021 and the dismissal of the complaint in DCC No.121 of 2020 passed by the Disciplinary Committee IV of the first respondent, quash the same and consequently direct the first respondent to enquire the complaint in DCC No.121 of 2020 afresh, on merits after following the procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder.

For Petitioner : Mr.N.Manokaran
For Respondent-1 : Mr.C.K.Chandrasekhar
For Respondents-2 and 3 : Ms.V.Srimathi

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The law contemplates the statutory power conferred on the Authorities must be exercised in the manner as contemplated under the Act and the Rules itself.



2. In the present case, the Bar Council of Tamil Nadu and Puducherry entertained complaint and after forming prima facie opinion, referred the matter under Section 35(1) of the Advocates Act, 1961, to the Disciplinary Committee for conducting an enquiry.

3. The Disciplinary Committee was in the process of conducting enquiry. During the pendency of the disciplinary proceedings, respondents 2 and 3 filed discharge application, which was entertained and the Disciplinary Committee heard the discharge application and allowed the same by discharging the respondents 2 and 3 from the disciplinary proceedings.

4. Part VII disciplinary proceedings and review Chapter-I contemplates the complaint against the Advocates and the procedures to be followed by the Disciplinary Committees of the State Bar Council and the Bar Council of India. The Rules are framed under Section 49(1)(f) of the Advocates Act, 1961.



5. Rule 11 (3) of the Bar Council of India Rules stipulates that "no disciplinary enquiry shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or that the complainant does not want to proceed with the enquiry".

6. When the Rules contemplate the procedures for dealing with the complaint by the Disciplinary Committee, the Committee is expected to follow the same and entertaining discharge application from the delinquent Advocate, is neither contemplated nor maintainable before the Disciplinary Committee. Thus by entertaining discharge application, the Disciplinary Committee has exceeded its powers as contemplated under the Rules. The excess exercise of powers resulted in erroneous decision, which caused prejudice to the complainant.

7. In the present case, in the absence of complete adjudication, the right of the complainant is prejudiced. Thus the Disciplinary Committee is bound to conduct enquiry proceedings in the manner as contemplated under the Rules cited supra and by affording an opportunity to all the parties concerned.



8. In view of the above reasons, we are inclined to consider the present writ petition. Accordingly, the order impugned dated 14.08.2021 passed in DCC No.121 of 2020 is quashed and the matter is remanded back to the Bar Council of Tamil Nadu and Puducherry for conducting fresh enquiry by referring the complaint to any other Disciplinary Committee for conducting enquiry by following the procedures as contemplated. The said exercise is directed to be completed as expeditiously as possible.

9. With the above directions, the present writ petition stands allowed. However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

18-06-2024

Index : Yes
Internet: Yes
Speaking order
Neutral Citation : Yes
Svn

To

The Secretary,



Bar Council of Tamil Nadu and Puducherry
High Court Campus,
Chennai-104.

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S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN, J.



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