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W.P.No.4816 of 2013

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

W.P.No.4816 of 2013

S.Diwakar

... Petitioner

Vs.

1. The Bar Council of Tamil Nadu,
Represented by its Chairman,
High Court Campus,
Chennai - 600 104.

2. K.Pranav Kumar

3. N.Rajalaxmi-Deleted

4. Gouthaman-Deleted

[R3 & R4 deleted as per order dated 26.02.2013
by SRJ in W.P.No.4816 of 2018]

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the 1st respondent relating to its resolution No.309 of 2012 dated 15.12.12 and to quash the same with its referring of proceeding before the disciplinary committee in D.C.C.No.49 of 2012 dated 11.02.2013 which as stated in the affidavit on coming out in the back drop of the instigated initiative is therefore arbitrary, against the principle of natural justice, lack of jurisdiction, erroneous, error apparent on face record, abuse of power, acting in excess, motivated and



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invalid so far as I am concerned.

For Petitioner : Mr.S.Diwakar (Party-in-Person)

For R1 : Mr.C.K.Chandrasekar

For R2 : No appearance

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM,J.**)

The Resolution No.309 of 2012 dated 15.12.2012 passed by the Bar Council of Tamil Nadu is under challenged in the present writ proceedings.

2. The resolution passed by the Bar Council forming a *prima facie* opinion would not provide a cause for institution of writ proceedings in a routine manner. Such *prima facie* opinion can be challenged on limited grounds, more specifically, if such opinion has been formed and issued by an incompetent Authority having no jurisdiction or tainted with the allegations of malafides. In all other circumstances, the *prima facie* opinion formed by the Bar Council may result in referring the matter to the Disciplinary Committee, who in turn has to conduct an enquiry by affording opportunity to all the parties. Therefore, forming a *prima facie* opinion or arriving at a conclusion that there is a reason to believe to refer the complaint to the Disciplinary



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Committee would not be a ground to adjudicate the matter on merits by the High Court in exercise of powers of Judicial Review under Article 226 of the Constitution of India.

3. It is a settled legal principle that disputed facts cannot be adjudicated in a writ proceedings. Such facts are to be adjudicated with reference to the documents and evidences available on record by the competent Authority/Forum. In the present case, the Bar Council of Tamil Nadu and Puducherry has formed an opinion that there is a reason to believe to refer the matter to the Disciplinary Committee. Thereafter, the Disciplinary Committee will issue notice of hearing and the parties have to appear and establish their respective cases in the manner known to law and in accordance with the Rules in force.

4. Nibbing the bud is not desirable, which may result in miscarriage of justice. In the event of High Court adjudicating the merits at the preliminary stage, the parties are deprived of establishing their case independently based on documents and evidences available on record. That apart, in a writ proceedings the documents are filed in piecemeal in xerox



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copies. Without adducing evidence and examination of witness and original documents, one cannot form a final opinion with reference to the complaint.

Therefore, usurping the powers of the Bar Council or sitting as a Appellate Authority is not preferable and High Court is expected to exercise restraint in such matters where the Bar Council formed a *prima facie* opinion to refer the matter to the Disciplinary Committee.

5. Section 35 of the Advocates Act 1961 provides punishment of Advocates for misconduct. Sub-section (1) to Section 35 enumerates that “*Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal of its disciplinary committee.*”

6. Legal profession is a noble profession. Lawyers are expected to maintain good conduct both inside and outside the Court, since they enjoy special status in the society. They have got duty towards the litigants, Court and their Colleagues and their conduct at all circumstances are expected to be in the manner contemplated under law. This exactly is the reason, why the



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Act contemplates not only professional misconduct but also other misconducts. Thus, the Bar Council is empowered to deal with other misconducts, if they have received any complaint against an Advocate for other misconducts. When the scope of the provisions are wider, the arguments advanced on behalf of the petitioner deserves no merit consideration.

7. The petitioner in person articulated his case by stating that he is not connected with the complainant and he is not even aware of the complaint. All these facts are to be placed before the Bar Council during the course of enquiry. Contrarily, High Court cannot decide the issues on merits. Thus, the petitioner is at liberty to participate in the process of enquiry to be conducted by the Bar Council by availing the opportunities to be provided in accordance with Rules.

8. With these observations, the Writ Petition stands **dismissed**. No costs.



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[S.M.S., J.] [C.K., J.]
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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

1. The Bar Council of Tamil Nadu,
Represented by its Chairman,
High Court Campus,
Chennai - 600 104.



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AND
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Order in
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