



W.P.No.27457 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Writ Petition No.27457 of 2019
and
W.M.P.No.26928 of 2019

T. Kumaran S/o. Thangavelu

... Petitioner

Vs.

1. The Disciplinary Committee XIV,
The Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai-600 104.

2. P. Muthukumar

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relevant to the order in D.C. No.298 / 2018 dated 30.04.2019 passed by the 1st respondent and quash the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the 1st respondent to punish the 2nd respondent and set aside / recall the withdrawal memo dated 29.04.2019.



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For Petitioner : Mr. B. Gopalakrishnan
For Respondents : Mr. M.R. Jothimanian [for R1]
No appearance [for R2]

ORDER

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

The *lis* on hand has been instituted challenging the final order passed in the disciplinary proceedings in D.C.No.298 of 2018 dated 30.04.2019.

2. The writ petitioner is the complainant submitted a complaint stating that the respondent/advocate, while functioning as Law Officer of the State accepted a brief against the State. In respect of the land comprised in various Survey Numbers, measuring to an extent of 2 acres and 51 cents, Patta and 'No Objection Certificate' from Chennai Metropolitan Development Authority (CMDA) had been sought for. The 2nd respondent, allegedly, received a sum of Rs.20,00,000/- from the writ petitioner/complainant in the year 2013. The said sum of Rs.20,00,000/- (Rupees twenty lakhs only) was received by Mr.D.Muthukrishnan and handed over to Mr.P.Muthukumar/2nd respondent. A Deed of Undertaking was executed by the said



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Mr.D.Muthukrishnan in favour of Mr.T.Kumaran with the promise that 'No Objection Certificate' will be obtained from Chennai Metropolitan Development Authority(CMDA) within a period of three months and also indemnifying a sum of Rs.20,00,000/- (Rupees twenty lakhs only) received to complete the job. The complainant/petitioner has further paid a sum of Rs.4,00,000/- (Rupees four lakhs only) in cash on 20.12.2014.

3. With reference to the allegation of demand and acceptance of bribe by the 2nd respondent/advocate, the petitioner/complainant has not succeeded in getting the works done, as per the agreement. Thus, the petitioner made a complaint before the Bar Council to initiate necessary disciplinary action against the respondent. The Bar Council found that there is a *prima facie* case and referred the matter to the Disciplinary Committee for conducting an enquiry. The Disciplinary Committee duly constituted and conducted an enquiry by affording opportunity to all the parties. The enquiry was conducted in 22 hearings, evidences were recorded and documents were considered. The order impugned reveals that the Disciplinary Committee considered the evidences and documents placed. In Paragraph Nos.15, 16 and 17 of the order impugned dated 30.04.2019 reads as under:



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"15. That apart the further developments in the course of the proceedings reflected a nasty picture where a memo for withdrawal of the complaint is persuaded to be filed by the complainant with a false promise to pay the complainant in full quit for settlement of the dispute. In his anxiety to give a quietus to the disciplinary proceedings initiated against him, the respondent has thoroughly overlooked the fact that by issuing the cheques dated 25.03.2019 and 30.06.2019 he has brought on record clinging evidence to prove the professional misconduct committed by him. He has committed a further offence of giving false evidence on oath in the disciplinary proceedings inspite of being quite conscious of the fact that he had in fact accepted money from the complainant as complained by him. Letting in false evidence an oath would be viewed seriously once such a false evidence is adduced contrary to the facts which is exclusively within the knowledge of the witness. To that extent his oral evidence given an oath stands discredited. His act of issuance of the cheque subsequent to the oral evidence brings a contradiction on record that he ad in fact received the money to favours to the complainant as demanded by him by abusing his official position which undoubtedly is professional misconduct committed by him which warrants punishment as decided by this Committee. Accordingly the respondent is guilty of professional misconduct as contemplated under Section 35 of the Advocates Act as there is every reason to believe that the respondent received money from the complainant to obtain undue favour to him by abusing his



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official position.

16. The tactics of filibuster adopted by the respondent reflecting his initial stand of taking money with a promise to obtain patta and NOC and thereafter returning the money reflects a clear abuse and professional misconduct to which the respondent is liable to be punished.

17. On 29.04.2019, when the Committee was having its sitting, it was informed by the Registry of the Bar Council that on 29.04.2019, the parties had sought for settlement of the matter and also submitting a memo to that effect. Hence the orders were withheld. On 30.04.2019, the joint memo dated 29.04.2019, filed by the parties was presented by the Registry. As the parties had filed the compromise memo, the same is taken on file. The Committee considered that the case being one of serious professional misconduct, it warrants a severe punishment. However, since the parties have sought for the compromise to be recorded and the complaint should be closed accordingly, the Committee has decided to accept the same as there is no personal interest in the Court which handles a case before it."

4. Perusal of the above findings would reveal that allegations made out against the respondent regarding demand and acceptance of bribe was established. The Disciplinary Committee has made a clear finding that the respondent is guilty of professional misconduct as contemplated under



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Section 35 of the Advocates Act, as there is every reason to believe that the respondent received money from the complainant/petitioner to obtain undue favour to him by abusing his official position. Further, it is recorded by the Disciplinary Committee that the case being one of the serious professional misconducts, it warrants a severe punishment. After making such a finding in the order, the Disciplinary Committee accepted the compromise memo filed between the parties and exonerated the respondent from the allegations of demand and acceptance of bribe.

5. Question arises, acceptance of compromise memo at the stage of passing final orders by the Disciplinary Committee can be entertained.

6. Section 35 of the Advocates Act, 1961 enumerates conduct of Advocates and it provides punishments for misconducts.

7. Sub-Section (1) to Section 35 states that "Where an 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 to its disciplinary committee."



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8. Sub-Section (3) to Section 35 denotes that the disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following order. Namely-

- (a) dismiss the complaint or where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocate.

9. When Section 35 in unequivocal terms contemplates that the professional misconducts are to be viewed seriously and it is a punishable one, the Disciplinary Committee after making a clear finding that the respondent is guilty of serious misconduct cannot turn around and exonerate the 2nd respondent by entertaining the compromise memo, more specifically, in the case of demand and acceptance of bribe for doing favours by abusing the official position. Such Compromise Memo if accepted, would result in a wrong precedent and we are afraid what exactly is the message the Bar



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Council is sending to the advocates, who all are in their roles. The Bar

Council being a body constituted under Act 25 of 1961, is expected to maintain high discipline, uniformity and consistency in disciplinary matters. There cannot be any favoritism or nepotism in dealing with the disciplinary matters. The Bar Council is playing pivotal role and expected to exercise the powers prudently, vigilantly and to maintain high professional standards, in order to promote justice delivery system and the Judicial institution as a whole.

10. The Disciplinary Committee cannot accept the compromise in all cases. They are bound to consider the nature of the misconducts, public interest involved and find out whether such allegations or misconducts are affecting public interest or opposed to public policies. Demand and acceptance of bribe is an offence under the Criminal Law. It is a punishable offence. Therefore, once allegations are established, the Committee has no option but to pass final orders on merits and in accordance with law and impose punishment in commensuration with the proved misconducts.



11. In the present case, the Bar Council of Tamil Nadu and Puducherry unfortunately accepted the compromise by imposing the cost of Rs.1,00,000/-(Rupees One Lakh Only), which would set a wrong precedent. Therefore, we are not inclined to approve the impugned order. However, the order impugned reveals that enquiry had been conducted in entirety and findings are given with reference to the proved misconducts. That being the factum, we are inclined to interfere with Paragraph No.18 of the order impugned alone and consequently, all the findings made in rest of the paragraphs in the order impugned are upheld.

12. In view of the facts and circumstances, paragraph No.18 of the order impugned passed in D.C. No.298 / 2018 dated 30.04.2019 alone is set aside. Based on the proved misconduct, the first respondent is directed to pass an order fresh, without causing any further delay. Consequently, the acceptance of compromise and the award of cost of a sum of Rs.1,00,000/- (Rupees One Lakh Only) in Paragraph No.18 is set aside and the matter is remanded back to the first respondent for passing final orders based on merits and impose appropriate punishment on the 2nd respondent as contemplated under the Act and Rules. The said exercise is directed to be completed within



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a period of two months from the date of receipt of a copy of this order.

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13. Accordingly, this Writ Petition stands **ordered with the above terms**. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S.J.] [C.K.J.]
05.06.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To
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The Bar Council of Tamil Nadu and Puducherry,
High Court Campus, Chennai-600 104.

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



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