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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-06-2024

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

And

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

WP No.31385 of 2019

And

WMP Nos.31551 and 31554 of 2019

1.S.Senthil Kumar
2.N.Murali Krishnan

.. Petitioners

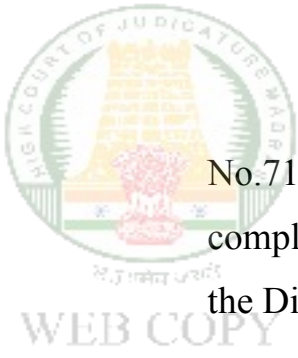
-VS-

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

2.M.E.V.Thulasi

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari, to quash the Resolution



No.718/2018 dated 28.09.2018 of the first respondent whereby the complaint of the second respondent dated 2nd February 2018 was referred to the Disciplinary Committee of the first respondent.

For Petitioners : Mr.K.Ravi Anantha Padmanabhan,
Senior Counsel for
Mr.B.Thirumalai.

For Respondent-1 : Mr.C.K.Chandrasekhar

For Respondent-2 : Mr.L.Chandrakumar

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The Resolution passed by the Bar Council of Tamil Nadu and Puducherry in Resolution No.718 of 2018 dated 28.09.2018, is under challenge in the present writ proceedings.

2. The second respondent-Advocate filed complaint before the Bar Council of Tamil Nadu and Puducherry in Complaint No.57 of 2018. In the said complaint, the Bar Council of Tamil Nadu and Puducherry formed *prima facie* opinion and referred the matter to the Disciplinary Committee



for conducting an enquiry. The formation of *prima facie* opinion is under challenge in the present writ proceedings.

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3. The learned Senior Counsel Mr.K.Ravi Anantha Padmanabhan for the petitioners, would contend that the complainant/ second respondent herself is an Advocate. The complaint is about filing of vakalat in the Courts. Thus it would not constitute misconduct under the Advocates Act, 1961 and therefore, the Resolution itself is liable to be set aside.

4. To substantiate the said claim, the learned Senior Counsel relied on certain factual allegations raised by the second respondent against the petitioners. However, the complaint filed by the second respondent reveals about certain allegations and it is not for the High Court to form an opinion at this stage about the factual disputes. Such disputed facts cannot be adjudicated in the writ proceedings. It is for the parties to participate in the process of enquiry to be conducted by the Disciplinary Committee and establish their case by availing the opportunities to be provided. The High Court cannot conduct a roving enquiry with reference to such disputed facts



and in the event of considering the factual grounds raised by the petitioners, there is a likelihood of prejudice to be caused to the complainant. This exactly is the reason why the Constitutional Courts time and again reiterated that judicial restraint is to be exercised, while venturing into the disputed facts between the parties.

5. Statutory enquiry to be conducted by the Disciplinary Committee must be allowed to go on, in order to cull out the truth behind the allegations. The Bar Council of Tamil Nadu and Puducherry formed *prima facie* opinion, as they found that there is a reason to believe to refer the matter to the Disciplinary Committee. Section 35(1) of the Advocates Act, 1961 provides powers to the Bar Council to form *prima facie* opinion and thereafter, refer the matter to the Disciplinary Committee. Therefore, the petitioners have to participate in the process of enquiry to be conducted by the Disciplinary Committee to establish their innocence or otherwise.

6. Nibbing the bud is not desirable, which may result in mis-carriage 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 writ proceedings xerox copies of the documents are filed in piecemeal. Without adducing evidence and examination of witness and verifying original documents, one cannot form a final opinion with reference to the complaint. Therefore, usurping the powers of the Disciplinary Committee or sitting as an Appellate Authority against the Bar Council is not preferable. 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.

7. Section 35 of the Advocates Act 1961 provides punishment 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.”

8. Legal profession is a noble. Lawyers are expected to maintain good conduct both inside and outside the Court, since they enjoy



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

9. The petitioner in person articulated his case by stating that he is no way connected with the complainant. All these facts are to be placed before the Bar Council during the enquiry through documents and evidences. Contrarily, High Court cannot decide the issues on merits. That being the principles to be followed, 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.



10. In view of the facts and circumstances, the petitioners are at liberty to participate in the process of enquiry to be conducted by the Disciplinary Committee. Since the matter is pending for long time, the Bar Council of Tamil Nadu and Puducherry is requested to conduct enquiry as expeditiously as possible and pass final orders. The petitioners are at liberty to raise all grounds raised in the present writ petition before the Disciplinary Committee, including the legal grounds.

11. With the above liberty, the present writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

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

18-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn
To

The Secretary,



Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus,
Chennai-600 104.

WEB COPY

WP No.31385 of 2



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



WEB COPY

WP No.31385 of 2



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WP 31385 of 2019

18-06-2024