

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15519 OF 2023

Mr. Ranjitsinh S. Ghatge. ..Petitioner
VS
Bar Council of Maharashtra & Goa and Ors. ..Respondents

Mr.M. D. Adkar and Mr. S. R. Ganbavale i/b. Mr. S.C. Wakankar with Mr. S.M.Adkar with Aishwarya Bapat, for Petitioner.
Mr. Yogendra Rajgor with Ms. Kairavi Dedhia, for Respondent No.1.
Mr. Shekhar Jagtap, for Respondent No.2.
Mr. Ajinkya Patil with Mr. Drupad Patil, for Respondent No.3.

**CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.**

DATE : 15 APRIL 2025

P.C.:

1. This petition under Article 226 of the Constitution of India, challenges an order dated 5 August 2023 passed by respondent No.2 namely the Disciplinary Committee, Bar Council of India (BCI), in the proceedings of BCI Tr. Case No.745 of 2023.
2. Mr. Adkar, learned Counsel appearing for the petitioner urged that the impugned order would be required to be interfered by this Court as there is basic procedural infirmity in the adjudication of the case at the hands of the BCI namely of a limited notice of one day; a hearing being concluded on the same day without an adequate opportunity of a hearing being granted to the petitioner; no framing of the charge; no opportunity of recording evidence etc. as specifically pleaded in the memo

of the petition. In supporting his contention Mr. Adkar has placed reliance on the decision of the Supreme Court in the case of **An Advocate Vs. Bar Council of India & Ors.**¹ and more particularly paragraphs 1 and 4 which read thus:-

“1. A host of questions of seminal significance, not only for the advocate who has been suspended from practising his profession for 3 years on the charge of having withdrawn a suit (as settled) without the instructions from his client, but also for the members of the legal profession in general have arisen in this appeal’:

(1) Whether a charge apprising him specifically of the precise nature and character of the professional misconduct ascribed to him needs to be framed?

(2) Whether in the absence of an allegation or finding of dishonesty or mens rea a finding of guilt and a punishment of this nature can be inflicted on him?

(3) Whether the allegations and the finding of guilt require to be proved beyond reasonable doubt?

(4) Whether the doctrine of benefit of doubt applies?

(5) Whether an advocate acting bona fide and in good faith on the basis of oral instructions given by someone purporting to act on behalf of his client, would be guilty of professional misconduct or of an unwise or imprudent act, or negligence simpliciter, or culpable negligence punishable as professional misconduct?

.....

4. At this juncture it is appropriate to articulate some basic principles which must inform the disciplinary proceedings against members of the legal profession in proceedings under Section 35 of the Advocates Act. read with the relevant Rules:

(i) essentially the proceedings are quasi-criminal in character inasmuch as a member of the profession can be visited with penal consequences which affect his right to practise the profession as also his honour under Section 35(3) (d) of the Act. the name of the advocate found guilty of professional or other misconduct can be removed from the State Roll of Advocates. This extreme penalty is equivalent of death penalty which is in vogue in criminal jurisprudence. The advocate on whom the penalty of his name being removed from the roll of advocates is imposed would be deprived of practising the

¹ 1989 Supp (2) SCC 25

profession of his choice, would be robbed of his means of livelihood, would be stripped of the name and honour earned by him in the past and is liable to become a social apartheid. A disciplinary proceeding by a statutory body of the members of the profession which is statutorily empowered to impose a punishment including a punishment of such immense proportions is quasi-criminal in character;

(ii) as a logical corollary it follows that the Disciplinary Committee empowered to conduct the enquiry and to inflict the punishment on behalf of the body, in forming an opinion must be guided by the doctrine of benefit of doubt and is under an obligation to record a finding of guilt only upon being satisfied beyond reasonable doubt. It would be impermissible to reach a conclusion on the basis of preponderance of evidence or on the basis of surmise, conjecture or suspicion. It will also be essential to consider the dimension regarding mens rea.

This proposition is hardly open to doubt or debate particularly having regard to the view taken by this Court in *L. D. Jaisinghani v. Naraindas N. Punjabi* (1976)¹ SOC 354 wherein Ray, C.J., speaking for court has observed: "In any case, we are left in doubt whether the complainant's version, with which he had come forward with considerable delay was really truthful. We think that, in a case of this nature, involving possible disbarring of the advocate concerned, the evidence should be of a character which should leave no reasonable doubt about guilt. The - Disciplinary Committee had not only found the appellant guilty but had disbarred him permanently." (emphasis added) (SCC p. 358, para 9)

(iii) in the event of a charge of negligence being levelled against an advocate, the question will have to be decided whether negligence simpliciter would constitute misconduct. It would also have to be considered whether the standard expected from an advocate would have to answer the test of a reasonably equipped prudent practitioner carrying reasonable workload. A line will have to be drawn between tolerable negligence and culpable negligence in the sense of negligence which can be treated as professional misconduct exposing a member of the profession to punishment in the course of disciplinary proceedings. In forming the opinion on this question the standards of professional conduct and etiquette spelt out in Chapter 2 of Part VI of the Rules governing advocates, framed under Section

60(3) and Section 49(1) (g) of the Act, which form a part of the Bar Council of India Rules may be consulted. As indicated in the preamble of the Rules, an advocate shall, at all times compose himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman bearing in mind what may be lawful and moral for one who is not a member of the Bar may still be improper for an advocate and that his conduct is required to conform to the rules relating to the duty to the court, the duty to the client, to the opponent, and the duty to the colleagues, not only in letter but also in spirit.

It is in the light of these principles the Disciplinary Committee would be required to approach the question as regards the guilt or otherwise of an advocate in the context of professional misconduct levelled against him. In doing so apart from conforming to such procedure as may have been outlined in the Act or the Rules, the Disciplinary Authority would be expected to exercise the power with full consciousness, and awareness of the paramount consideration regarding principles of natural justice and fair play.”

3. We have heard learned Counsel for the parties. Mr. Jagtap, learned Counsel for respondent No.2-BCI, on instructions, has taken a fair stand. He would submit that the BCI is ready and willing to *de novo* adjudicate the complaint of respondent No.3 and subject matter of BCI Tr. Case No.745 of 2023 as filed against the petitioner, in accordance with law. He also fairly submits that this Court hence need not delve on the issues as raised in the petition, leaving it to the Disciplinary Committee of the BCI to delve on such issues and take a fresh decision on the proceedings. We appreciate the fair stand taken on behalf of the BCI. In this view of the matter, in our opinion, further adjudication of the petition is not called for.

4. We find that an ad-interim order was passed by the coordinate Bench of this Court (Coram: A. S. Chandurkar & Firdosh P. Pooniwalla, JJ.) which is required to be noted, which reads thus:

“1] The Petitioner seeks to raise a challenge to the Order dated 05/08/2023 passed by Disciplinary Committee of the Bar Council of India. The learned Counsel for the Respondent No.1 raises a preliminary objection to the maintainability of the Writ Petition on the ground that under Section 38 of the Advocates Act, 1961 remedy of filing an appeal is available to the Petitioner.

2] The learned Counsel for the Petitioner submits that the challenge to the impugned order is based on the premise that the principles of natural justice have been violated while holding the Petitioner guilty. He also seeks to raise an issue of jurisdiction insofar as the direction to pay monetary compensation has been issued by the Disciplinary Committee.

3] To consider the issue of maintainability of the Writ Petition, we deem it appropriate to direct the Respondents to file their affidavit-in- reply. The affidavit-in-reply may also deal with the grounds raised in the Writ Petition. Such affidavits be filed by 12/01/2024. Rejoinder, if any, be filed by 22/01/2024. Put up for further consideration on 29/01/2024.

4] It is submitted by the learned Counsel for the Respondent No.1 that insofar as Clause No.2 in the impugned order is concerned, Notification to that effect has been issued on 16th October 2023. The consequence prescribed in Clause-3 is yet to take place. Hence, without prejudice to the rights and contentions of the parties and subject to the Petitioner depositing 50% of the amount of Rs 14 lakhs as directed within a period of three weeks from today, the operation of Clause-3 of the impugned order shall remain stayed until further orders.”

5. As directed in paragraph 4 of the aforesaid order, 50% of the amount as directed in the impugned order passed by BCI/respondent No.2 (Rs.7 lakhs) has been deposited in this Court and which is stated to be invested in a fixed deposit, so as to operate as a stay to paragraph 3 of the operative part of the impugned order. In our opinion, the said amount

can continue to remain deposited with the Court and which shall be subject to the fresh orders which would now be passed by the Bar Council of India.

6. In this view of the matter, the writ petition is disposed of in terms of the following order:-

ORDER

(I) The impugned order dated 5 August 2023 passed by the Disciplinary Committee of Bar Council of India – Respondent No.2 is quashed and set aside.

(II) The proceedings of BCI Tr. Case No.745 of 2023 stands remanded and restored with the Disciplinary Committee of the Bar Council of India for *de novo* consideration and for fresh decision to be taken on such complaint. Let such decision after hearing the parties in accordance with law and as expeditiously as possible, however, within a period of six months from the date a copy of this order is presented before respondent No.2/BCI.

(III) The amount of Rs.7 lakhs as directed to be deposited by this Court vide order dated 22 December 2023, shall remain deposited with the Registry of this Court, which shall be permitted to be withdrawn by the appropriate party as per the orders to be passed by respondent No.2/BCI.

(IV) All contentions of the parties on the adjudication of the case are expressly kept open.

(V) As the impugned order itself has been set aside, needless to observe that the petitioner would continue to be on the rolls of the Bar Council of Maharashtra and Goa, and shall be entitled to practice subject to such further orders to be passed by the BCI on the complaint in question.

7. Disposed of in the above terms. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]