



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7047 OF 2024

(Ashok s/o Bhimrao Shelke vs. Bar Council of Maharashtra and Goa through its Secretary and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr.Mohan Sudame, Senior Advocate assisted by Mr.I.A.Fidvi,
Advocate for petitioner/s
Mr.K.S.Narwade, Advocate for respondent Nos.1 and 3.
Ms.Naina Dhote, Advocate for respondent No.2.

CORAM : AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.

DATE : JANUARY 23, 2025

- 1) Heard Mr.Sudame, learned Senior Counsel along with Mr.Fidvi appears for the petitioner, Mr.Narwade for respondent Nos. 1 and 3 and Ms.Naina Dhote, appears for respondent No.2.
- 2) On 16/01/2025, we had recorded the following position:-

“The petition questions the resolution No.220/2023, dated 15.10.2023, passed by the Bar Council of Maharashtra and Goa (page 46), by which it has resolved to initiate suo motu DC Enquiry against the petitioner and till that time has suspended the license to practice. It is contended, that such an action was impermissible in view of the mandate of Section 35(3) of the Advocate’s Act, which mandates a prior opportunity of being heard is to be granted to the concerned Advocate before imposing the punishment of suspending the practice under Section 35(3)(c). It is also contended, that the punishment to suspend could only be in the nature of final order and not an interim measure. Mr.Bhise, learned counsel h/f Mr. Narwade, learned counsel for the respondent no. 1, however, seeks time, considering which list the matter on 22.01.2025.”

3) Mr.Narwade, learned Counsel for respondent Nos.1 and 3 today has not been able to point out anything, which would enable us to take a different view than what has been recorded above. The language of Section 35 of the Advocates Act, 1961 clearly indicates that the punishment has to be imposed on account misconduct which in turn would mean a proven misconduct and not otherwise. The provision of Section 35 also do not indicate to us that any power to impose any interim punishment has been conferred upon the Bar Council. That being the position, the communication dated 21/10/2023 (pg.44) and the resolution No.220 of 2023 dated 15/10/2023 to the extent that it issued a direction to suspend the licence to practice of the petitioner during the pendency of the enquiry and further direction not to appoint him as an Assistant Public Prosecutor are hereby quashed and set aside.

4) The petition is allowed in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)