



W.P.No.31727 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.10.2025	Pronounced on: 19.12.2025
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CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

and

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.31727 of 2024
and
W.M.P.No.34470 of 2024

R.Jim

.. Petitioner

Vs.

The Secretary,
Bar Council of Tamil Nadu and Puducherry,
High Court Campus,
Chennai – 600 104.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for all the records pertaining to the Prohibition order passed by the respondent vide No.675 of 2024 in R.O.C.No.974/2024 dated 09.07.2024 and quash the same as arbitrary and illegal.

For Petitioner : Mr.R.Jim (party-in-person)

For Respondent : Mr.C.K.Chandrasekar



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ORDER

(Order of the Court was made by V.LAKSHMINARAYANAN, J.)

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Factual Background:-

The petitioner is an Advocate. He claims that he has been practising before the Madurai Bench of the Madras High Court and before the Courts and Tribunals in the District of Tirunelveli for over 13 years.

2.A group of Advocates in Tirunelveli District formed a whatsapp group titled “மாவட்ட நீதிமன்றம்”. The petitioner alleges, on 03.05.2024, an Advocate by name, A.Siva Subramanian posted a highly derogatory message against a particular religion and had also posted a message steeped in hatred. The petitioner, being a part of that whatsapp group, made a request calling upon the group members not to post messages which hurts the sentiment of others.

3.On the very same day, a group of lawyers, claiming to be the juniors of one Mr.Rajeshwaran, came over to his residence and abused the petitioner and his family members in unparliamentary language. They also held out that if the petitioner were to post similar messages, they would ruin the lives of the petitioner and his family members.



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4.Fearing that the threat might be carried out into action, the petitioner lodged a complaint with the Station House Officer, Perumalpuram Police Station. After enquiry, the police registered an FIR in Crime No.250 of 2024, on 22.05.2024. Simultaneously, the members of Tirunelveli Advocates Association preferred another complaint to the Palayamkottai Police Station. The petitioner states that on account of the pressure brought on the police by the Advocates, an FIR was registered against the petitioner in Crime No.281 of 2024, on 06.05.2024.

5.The cause of action for the present writ petition arose on account of a complaint in Crime No.281 of 2024, being forwarded to the 1st respondent by one Barathimurugan, the Vice President of the District Advocates' Association. In the said complaint, it was stated that the writ petitioner had abused the President of the Tirunelveli District Advocates Association at Palayamkottai in a derogatory manner and had circulated the audio recordings of the same in the whatsapp official group and had also threatened the President with dire consequences.

6.Acting on the complaint filed by Barathimurugan, the 1st respondent placed the same before the General Council of the Bar Council to take appropriate action. The General Council taking note of



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the fact that the writ petitioner had been accused of offences under Sections 153, 294(b) and 506(i) of Indian Penal Code, decided to take firm and severe action. Accordingly, it passed a resolution on 05.07.2024 in Resolution No.675 of 2024, prohibiting the writ petitioner from practising as an Advocate in any Court of law, Tribunal, etc., till the disposal of the criminal case.

7.It further added that the writ petitioner is prohibited from practising pending disposal of the disciplinary proceeding. The petitioner was called upon to surrender his enrolment certificate and identity card issued by the Bar Council, within three days from the date of receipt of the copy of the order. Challenging the same, the present writ petition.

8.This Court entertained the writ petition on 23.10.2024 and granted an interim stay of the impugned proceeding.

Counsel and their submissions:-

9.We heard the party-in-person and Mr.C.K.Chandrasekar for the respondent.

10.The party-in-person urged that the impugned order is vague and does not corroboratively satisfy any allegations against him. Furthermore, the impugned order is one passed in utter violation of



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principles of natural justice. He also pleads that the resolution is unconstitutional, since it affects his constitutional rights under Article 19(1)(g) of the Constitution of India, i.e., to practice any profession, or to carry on any occupation, trade or business. He also pleads that the Bar Council does not have the jurisdiction to pass the order on interim suspension pending the disciplinary proceedings.

11.Mr.C.K.Chandrasekar urged that the petitioner has an alternate remedy by way of a revision to the Bar Council of India, hence, this writ petition is not maintainable. He adds the respondent had received the copy of the FIR and had noted the petitioner has been accused of penal offences. He states that by virtue of the Advocates Act, 1961 (“Advocates Act”) and the Code of Conduct developed by the Bar Council of India, the profession of advocacy, being a noble profession, advocates should maintain high order of decorum and dignity while carrying out their duties to the Court, to the client and to fellow members of the profession. He states since the writ petitioner had failed to uphold these noble principles, the Bar Council was constrained to take firm and severe action against him.

12.On the matter of jurisdiction of the Bar Council passing an order of interim suspension, he states this position has been settled by several judgments of the Supreme Court and this Court. He pleads



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that continuation of the petitioner in the profession, pending the criminal case, is a serious one and hence, the Bar Council was constrained to take the said action.

13.We have carefully considered the submissions of both sides and gone through the records in detail.

Maintainability:-

14.At the outset, we deal with the issue regarding the exercise of discretionary power under Article 226. Mr.C.K.Chandrasekar pointed out that there is a power of revision vested with the Bar Council of India under Section 48A of the Advocates Act against any order passed by a State Bar Council and therefore, this writ petition is untenable.

15.We are not inclined to accept this submission on several grounds. First, it is due to very doctrine of alternate remedy. The existence of an alternative remedy, by itself, does not remove the jurisdiction of this Court under Article 226 of the Constitution of India. This doctrine has been developed by the Indian Courts on account of their pre-existing practice during the British era. It is referable to Section 45 of The Specific Relief Act, 1877. That Section had a proviso whereunder, if an alternative remedy exists, the power



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of High Court to issue a writ was restricted. With the Constitutional revolution of 26.01.1950, the restrictions which Courts in British India faced, have vanished. The power to issue writ petitions is no longer statutory; it is constitutional. Still the Courts adopt the rule as a matter of discretion and not as a mandatory one, as was followed earlier.

16.The second principle is where a party pleads violation of principles of natural justice, a writ is certainly maintainable. Mr.R.Jim had urged that before the impugned order was passed, he was not put on notice or heard. In addition, he challenges the jurisdiction of the Bar Council to pass the order.

17.Summarising the principle related to alternative remedy, the Supreme Court in ***Radha Krishnan Industries Vs. State of Himachal Pradesh and others, (2021) 6 SCC 771***, held that a writ is certainly entertainable when there is violation of principles of natural justice and also when plea of jurisdiction and constitutionality are raised. Furthermore, the mere existence of alternative remedy by which the aggrieved party may secure relief does not create a bar on the High Court to exercise its jurisdiction. (See, ***Maharashtra Chess Association Vs. Union of India, 2019 SCC OnLine SC 932***)



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18.The additional ground on which we will reject this argument is a very reading of the provision itself. A revision under Section 48A is maintainable only when the State Bar Council or a Committee thereof has disposed of proceedings under the Act. In the present case, a bare perusal of the impugned order, shows that the proceedings are still pending and the impugned order is interim in nature and not a final order. When the proceedings have not been disposed of by the State Bar Council, a case for revision under Section 48A, Advocates Act does not arise.

19.Finally, it has been a practice of this Court that where Rule Nisi has been issued and the matter has been taken up for final disposal, a party should not be pushed to avail the alternate remedy.

20.We have pointed out that no alternative remedy exists and therefore, the plea of maintainability and entertainability raised by Mr.C.K.Chandrasekar is rejected.

Whether right to practice legal profession is a fundamental right?

21.The plea of Mr.Jim that he has an unbridled fundamental right to practice, cannot be accepted. This is because, the fundamental right under Article 19 inhere in every citizen of this country. By no stretch of imagination can it be pleaded that there is an inherent right to practice the profession of Advocacy.



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22.The Advocates Act 1961, makes it clear under Chapter-IV of the Advocates Act, that right to practice the profession of law can be done only by a recognised class of persons, namely, *Advocates*. Section 30 of the Advocates Act makes it clear that only those Advocates whose name is entered in the State Roll of a Bar Council are entitled, as a matter of right, to practice the profession throughout the territories to which the Act applies. It is further clarified under Section 32 that a Court, may permit any person, not enrolled as an Advocate under the Act to appear before it in any particular case.

23.Similarly, Section 33 of the Advocates Act makes it clear that no person will be entitled to practice, in any Court or before any authority or person, after the appointed date, unless he has been enrolled as an Advocate under the Act. Chapter-IV of the Advocates Act came into force pursuant to the Notification issued by the Central Government on 01.06.1969 in S.O.1500. When the Act was notified on 07.08.1961, it was Chapters I, III and VII, which came into force immediately. Chapter-I deals with the preliminary issues; Chapter-II relates to establishment of State Bar Councils; Chapter-VII relates to temporary and transitory provisions, pursuant to the repeal of enactments covered under Section 50 of the Advocates Act. In fact, Chapter-VI itself was notified much later on 04.01.1963. The repeal of



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the Indian Bar Council Act, 1926 was also notified much later on 15.12.1961.

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24.An analysis of these provisions point out that no person has an unrestricted fundamental right to practice the profession of law. The right to represent another in a Court of law or Tribunal or such other authority, is subject to the Advocates Act read with the Rules that may be made by the High Court under Rule 34(1) of the Advocates Act. Hence, we are of the view that right to practice as an Advocate is a right, statutory in nature, tracing its origin to Article 19(1)(g). Only those persons who qualify themselves and get themselves enrolled before a State Bar Council and comply with the requirements of the Rules made by the High Court under Section 34(1) are entitled to practice the profession of law.

25.In addition we have to add that even as per the Constitution, the right under Article 19(1)(g) of the Constitution of India is not unrestricted. The State has the power to impose reasonable restrictions in the exercise of that right. This is clear from Article 19(6) of the Constitution of India. Article 19(6) suffered an amendment by the Constitution (First Amendment) Act, 1951. By that amendment, the following words were inserted:-

“nothing under Article 19(1)(g) will affect the operation of any existing law or prevent the State from making any law
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relating to the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business”.

26.By virtue of this amendment, the Indian Legal Practitioners Act, 1879, and Indian Bar Council Act, 1926, came to be protected. In addition, the Parliament has enacted the Advocates Act, 1961, which not only specifies professional qualifications for practising law, but also the requisites for continuing such practice. In view of this, the plea of Mr.R.Jim that he has an unrestricted constitutional right to practice deserves rejection [See, (i) ***N.K.Bajpai v. Union of India, AIR 2012 SC 1310***, ii) ***Gaurav Kumar v. Union of India, (2025) 1 SCC 641*** (paragraph 104)].

27.Hence, this plea of Mr.R.Jim deserves rejection and accordingly, is rejected.

History of Legal Profession:-

28.Insofar as the other issues are concerned, we would like to trace the history of profession before we get into the nitty-gritty details on jurisdiction.

29.It cannot be disputed that the profession of law has existed right from the time the human kind decided to form itself as a society and brought about rules as to how the members of that society should



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behave. In case of any breach of these rules, it required a lawyer to defend the accused.

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30. History of Roman Law is replete with famous lawyers. Marcus Tullius Cicero comes to one's mind immediately. It was his defence of Sextus Roscius against a fabricated charge, that laid the foundations of defence advocacy. His writings and orations influenced Roman Law to a great extent. We can also cite Tribonian, an eminent jurist and advisor in the Byzantine Empire, who was one of the architects behind Corpus Juris Civilis, Code of Justinian under Emperor Justinian-I. Another famous Lawyer is Solon.

31. In the medieval ages, we have a glorious example of Sir Thomas More, who was an advisor on law to King Henry VIII. By virtue of the ability to influence the society and also persuade the Court, an Advocate is often referred to as an officer of Justice and friend of Court. The cab rank rule requires that an Advocate should accept any brief that comes his way and should do the work that he has undertaken. On account of the crucial duties performed by an Advocate, it can be said without any dispute that a lawyer is as much a part of the administration of Justice as any other office holder.

32. The legal profession in India underwent several stages. Today, we follow the pattern that had been evolved by the British



colonialists. Before 1726, the Courts that were established in India derived their power not from the Sovereign British Crown, but acted under the Directors of British East India Company. In 1726, the Crown issued a Charter establishing the Mayor's Court in the Presidency Towns of Calcutta, Madras and Bombay. The procedure followed in the Mayor's Court was based on English law, but none who were involved in those Courts had any formalised legal training. Persons, without any knowledge of law, used to practice before the Courts. The British issued another Charter in 1753. In this Charter too, no provision was made for legal education or training. Even after this Charter, the profession continued to be unorganised.

33. For the first time, through the Regulating Act, 1773, the Colonial Sovereign – The King in England, was empowered to establish a Supreme Court in colonial India. The Sovereign issued a Charter in 1774, establishing a Supreme Court in Calcutta. Clause-II of the Charter Act, 1774, empowered the Supreme Court of Judicature at Calcutta to approve and enrol advocates and attorney in law. This body of professionals alone was authorised to appear and act in the Supreme Court. The Supreme Court was bestowed with the power to remove any advocate or attorney on a reasonable cause being shown. Natives or Indian legal practitioners were not permitted audience in the Supreme Court. At that time, the meaning of the word 'Advocate'



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was confined to British and Irish Barristers, who were called to the Bar by one of the Four Inns. This body also included those from Scotland. The terms 'attorneys of law' under the Chapter referred to the Solicitors from Britain.

34. Noticing aspiration of natives to practice law, the Bengal Regulation - VII of 1773 was promulgated. This permitted qualified Hindu and Muslim persons to enrol as pleaders. Subsequently, another regulation titled Bengal Regulation – XII of 1833 was issued which allowed all qualified persons of any nationality or religion to enrol as a pleader of the Sadar Diwani Adalat. A legislation was passed in 1846, titled The Legal Practitioners Act, 1846. This too allowed the persons of any nationality or religion to act as pleaders. It allowed any Barrister enrolled in any of the Courts in India also to plead before the Court of Sadar Diwani Adalat. Soon thereafter, the Legal Practitioners Act, 1853, was legislated upon. This Act authorised Barristers and attorneys of Supreme Court to plead before any Court subordinate to that Court.

35. With the passing of the Indian High Courts Act, 1861, the Government of the day was empowered to establish High Courts in Presidency Towns. Soon after the establishment of the High Courts, Civil and Criminal Courts were organised in different towns. Eighteen



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years after the Indian High Courts Act, 1861, the first legislation dealing directly with legal practitioners was brought about. Till then, it was the Courts which were admitting and regulating the practice of lawyers. Under the Legal Practitioners Act, 1879, the term 'legal practitioner' was defined. It covered Advocates, Vakils, Attorneys of High Courts, pleaders, Mukhtars or revenue agents also. The latter category were non graduates, and at best, educated to Matriculation level. All legal practitioners came under the same jurisdiction of the High Court. Vakils were categories of persons, who had secured their law degrees from Indian Universities.

36.By Section 5 of this Act, any person who was enrolled on the roll of any High Court, was entitled to practice in all Courts subordinate to such Court. Section 6 empowered the High Court to make Rules, consistent with the Act, as regards suspension and dismissal of pleaders and Mukhtars. Under Sections 12 and 13, the High Court had the power to suspend or dismiss any pleaders or Mukhtars. For the purpose of this case, Section 14 is of utmost importance. This Section outlined the procedure for investigating charges against a pleader or Mukhtar for professional misconduct in a subordinate Court. It was under this Section, for the first time, that the power was granted to an authority **to pass an order of**



suspension against a legal practitioner, pending investigation and decision of disciplinary proceedings.

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37. When the demands for having a Bar Council started among the practitioners, the Indian Bar Committee of 1923 was formed. The purpose of this Committee was to recommend the move towards self governance of the profession. The Indian Bar Committee recommended constituting a Bar Council for each High Court. Acting on a few of the recommendations of the Bar Committee, the Indian Bar Council Act, 1926 was legislated. This legislation aimed to unify the profession. It also empowered Bar Councils to enquire into complaints regarding professional misconduct. However, the role of such Bar Councils were only advisory. The ultimate power to reprimand, suspend or remove an Advocate from practice, found guilty of misconduct, continued to be with the High Court. This was by virtue of Section 10 of the Indian Bar Council Act, 1926.

38. Post Independence, All India Bar Committee was constituted under the Chairmanship of Justice S.R.Das. The Committee recommended the establishment of All India Bar Council and a Bar Council for each State. It also recommended the power of enrolment, suspension or removal of an Advocate be vested with the Bar Council. It further recommended a common roll of Advocates be maintained



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and they should be authorised to practice in all courts across the Country. It is pertinent to point out here that similar recommendations were made by the First Law Commission of India in its 14th Report.

39.As a result of these reports, the Advocates Act, 1961, came into force. The purpose of this legislation is to achieve uniformity and dignity of profession of law on all India basis. The Advocates Act provides for a Bar Council in each State and all India Bar Council consisting mainly of representatives of the State Bar Councils. Under this Act, a State Bar Council enrolls qualified persons as Advocates.

40.We have traced the history in order to show that the profession has gone through several stages of development. The power which was vested with the erstwhile Supreme Courts in the Presidencies and thereafter with the High Courts, now stands transferred to the Bar Councils. The power to initiate and pass orders on disciplinary proceedings of Advocates which was initially vested with the Supreme Court and thereafter with the High Court were divested and subsequently, vested with the Bar Councils.

Taxonomy of the Advocates Act, 1961:-

41.The Advocates Act itself has several chapters. Chapter-II contains Sections 3 to 15, which deal with State Bar Councils.

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Chapter-III contains Sections 16 to 28, which deals with admission and enrolment of Advocates. Chapter-IV deals with right to practice which we have already adverted to above. Chapter-V, which is essential for the present case, has Sections 35 to 44. It deals with conduct of Advocates. Chapter-VI deals with miscellaneous aspects including the Rule making power of the Bar Council of India and Chapter-VIII, which is more or less redundant, contains temporary and transitional provisions.

42. With the consolidated legislation having been brought into, the Indian Bar Council Act, 1926, the Legal Practitioners Act, 1879, the Bombay Pleaders Act, 1920, and the provisions of the Letters Patent insofar as they related to admission and enrolment of legal practitioners were repealed.

43. The power to initiate disciplinary action is initially vested with the State Bar Council. Such proceedings are treated as quasi-criminal proceedings. It has been interpreted by the Supreme Court in ***An Advocate Vs. Bar Council of India and another, AIR 1989 SC 245***, that the provisions under Section 35 are quasi-criminal in character. This is because a member of the profession can be imposed with penal consequences which affects his right to practice to profession as well as to his honour.



44.The said judgment interpreted that the penalty of removal from the said role of an Advocate amounts to death penalty akin to that invoked in criminal jurisprudence. The judgment also pointed out that an Advocate, on whom punishment is imposed, would be deprived of practising his profession of choice, robbed of his means of livelihood, would be stripped of his or her fair name and honour earned in the past. He / she would face social apartheid.

45.Since the Supreme Court has declared the nature of proceedings would be quasi-criminal, the allegations of misconduct must be established beyond reasonable doubt. Mere preponderance of probabilities is not sufficient. The doctrine of benefit of doubt would also apply in such cases. In case, uncertainty regarding the advocate's guilt arises, then, the disciplinary committee would have to give the benefit of doubt to the Advocate. This also contemplates procedural fairness in the form of framing of specific charges and an opportunity of being heard. By framing of specific charges, the Advocate must be specifically informed of the nature of allegations made against him, so as to enable him not only to understand the allegations, but also to enable him to prepare an effective defence. An opportunity of hearing must certainly be given as the alleged delinquent-Advocate, in case found guilty, is in the risk of, as pointed out by the Supreme Court above, losing his livelihood and being condemned to social apartheid.



46.While imposing punishment, the disciplinary committee should necessarily consider whether the Advocate acted in a mean disregard of the decorum or behaved in a disorderly manner or with a corrupt motive. The emphasis of this aspect is made since the disciplinary committee has to distinguish between mere negligence and culpable professional misconduct.

47.We have to point out here the judgment of the Supreme Court in ***In re Sri 'M', an Advocate of the Supreme Court of India, 1956 SCR 811*** at **814**. The Supreme Court emphasised that even in the absence of detailed rules regarding disciplinary matters, the fundamental principles of fairness and natural justice should be adhered to. It was held that this includes ensuring that the Advocate accused of delinquency is made aware of the specific allegations against him. The specific charge must be clearly articulated and communicated to the Advocate to enable him to understand the case and prepare the defence. During the course of the judgment, the Court referred to Section 251-A of the Code of Criminal Procedure, 1898. It pointed out that the procedure, as in a warrant case should be adopted as far as possible. The Court further held that a disciplinary proceeding, though not a criminal trial, the seriousness of the potential consequences, namely suspension from practice or



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removal thereof insisted a process that is as rigorous as fair as a judicial proceeding.

48.The Supreme Court applied this principle to itself while initiating an action by it against an Advocate practising before it. If such high standards were maintained even for enquiries commenced by the Supreme Court, certainly they would apply when an enquiry is being conducted by the State Bar Council. This is more so because, as pointed out earlier suspension of an Advocate not only has serious consequences with respect to himself, but would result in deleterious situation for the client who has engaged him, his family members and to the court where he is practising.

49.This Court in exercise of powers vested in it under Section 34(1) of the Advocates Act, 1961, has framed the Rules in P.Dis.No.576 of 1969. The said Rules were published in Part-V, Pg.No.74 of the *Fort St. George Gazette* on 21.01.1970. Rule 14 is of importance to this case. The said provision reads as under:-

“14.No advocate who has been found guilty of contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt.”



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50.No Advocate who has been found guilty of contempt of Court

shall be permitted to appear, act or plead in any Court unless he has purged himself of “*contempt*”.

51.This provision points out, that unless and until, an Advocate has been found guilty, even a court cannot prevent him from appearing, acting or pleading in any Court. Prior to passing such an order, an Advocate in terms of the Contempt of Courts Act or under Article 215 of the Constitution of India, is given an opportunity to defend himself against a charge. It is only after coming to a conclusion that an Advocate is guilty as charged, is the Court entitled to pass the order preventing him from performing his professional duties.

52.Similarly, under Section 35 of the Advocates Act, before an Advocate is suspended from practice, the Section demands that an opportunity of being heard should be afforded to him. This provision has to be read along with Section 36(3), which relates to the disciplinary power of the Bar Council of India. Disciplinary Committee of the Bar Council of India too has to adhere to the procedure laid down under Section 35 of the Act. This is clear from Section 36(3). Furthermore, an order of suspension under Section 35(3) or under Section 36(3) can be for such period as the disciplinary committee of a Bar Council deems fit. This shows the Parliament required the



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delinquent Advocates to suffer the punishment of suspension for a stated period after being afforded an opportunity of hearing.

53. A mere perusal of the said provisions evidences that it was specifically directed by the Parliament that the punishment of suspension must be preceded by that procedure as dictated by natural justice, i.e., affording an opportunity of hearing before the decision is taken. The procedure of “interim suspension” drawn up and followed by the State Bar Council cannot be traced to the statute and rules framed by the Parliament, and in fact, it runs contrary to the mandate of the Parliament. Further, as the language of Section 35(3) indicates, “interim suspension” for unclear and indefinite periods of time is not that which is sanctioned by the statute. In fact, the Parliament, while framing Section 35(3)(c), has in unambiguous terms, clarified that suspension can be for specified periods alone. Therefore, to suspend an advocate without affording an opportunity of hearing pending the period of enquiry and disposal of criminal case is unwarranted.

54. It is also to be noted that the Parliament under Section 35(3), in its wisdom, has chosen to include “suspension from practice” and “removal from the State roll” as two distinct and independent punishments. To pass orders of interim suspension for indefinite and



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unclear periods would in effect amount to removing the very name of the advocate from the State roll without affording an opportunity of hearing. Therefore, the same would only indicate that over the course of time, the State Bar Council has come to usurp an authority which was not contemplated by the Parliament, and a procedure, overtly prohibited by it.

55. The impugned order, in this case, does not fix any time limit for suspension. It is shown to continue till the disposal of the criminal proceedings as well as till the disposal of the disciplinary proceedings. The disciplinary proceedings have also not been concluded within the time granted by the statute.

56. In other words, by exercising the power of interim suspension, which in our opinion the Bar Council does not possess, an Advocate can be suspended for unlimited period. That is not the purport of Section 35(3) or 36(3). Being a quasi criminal proceeding, an Advocate cannot be placed in the same situation as *Josef.K* in *The Trial* written by Franz Kafka. Such a situation apart from being surreal, would also be nightmarish to an Advocate. It would be an atmosphere where logic dissolves and the individual Advocate is crushed by the authority. The existence of the world where there is no inherent meaning for justice, and where we only recognise the process



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followed regardless of its outcome would be arbitrary and consequently violative of the constitutional provision under Article 14 of the Constitution of India.

Power & Function – Difference

57.It was urged by Mr.C.K.Chandrasekar that though the Advocates Act has not included a provision enabling the Bar Council to pass an order of interim suspension pending enquiry, he refers to Section 6(1)(c) and 6(1)(i) of the Advocates Act, to urge that this power inheres in the Bar Council. Though the submission seems tantalising in the beginning, on a closer scrutiny, we are of the view that is a red herring argument. There is a logical and legal fallacy in the submission. Mr.C.K.Chandrasekar has relied upon an irrelevant part of the Advocates Act, in order to divert the attention from the main subject. Let us now demonstrate the following.

58.There is a lot of difference between ‘power’ and ‘function’. What Mr.R.Jim impugns before us is the power of the Bar Council to pass an order of interim suspension. The heading and the body of Section 6(1) shows the details of “Functions of the State Bar Councils”. Section 6(1)(i) states that the function of the Bar Council is also to do all necessary to discharge the aforesaid functions.



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59.The difference in power and function is well known.

(i) 'Power' refers to the legal ability or authority to do an act. It is essentially discretionary in nature.

(ii) 'Function' refers to the obligatory duty or role that an individual or a statutory body is required to perform.

60.For example, the Court may have the power to grant an interim order, which it can choose to exercise or not. A function is the duty of the Court to decide. We can give another example. If a crime occurs and it is brought to the notice of the law enforcing authority, it is their function to register a complaint. No discretion is given to the officer to refuse registration of an offence. He has the power to arrest. It is in his discretion to arrest or not to do so. In other words, power is discretionary and function is mandatory or obligatory.

61.The renowned American Jurist Hohfeld delineated the difference between Jural Opposites and Jural Correlatives. He did so in his seminal work "**Functional Legal Conceptions as applied in Judicial Reasoning; 23 Yale Law Journal – Pg.16 – 59 (1913)**". Subsequently, his ideas were published in the form of a book with the same title.



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62.Hohfeld made a distinction amongst different legal conceptions, rights, privilege, power, immunity, etc., For ready understanding they are set forth hereunder:-

{ Jural	rights	privilege	power	immunity
{ Opposites	no-rights	duty	disability	liability
{ Jural	right	privilege	power	immunity
{ Correlatives	duty	no-right	liability	disability

63.The view expressed by Hohfeld shows that “power” is fundamentally different from “function”. The view expressed by Hohfeld has been accepted by a Constitution Bench of the Supreme Court in ***Inre Section 6-A of the Citizenship Act, 1955, 2024 SCC OnLine SC 2880***. The Supreme Court in paragraph No.87, quoted that “*it is established jurisprudentially that the correlative of a duty is a right*”. If we were to accept the submission of Mr.C.K.Chandrasekar, then we would be blurring the difference between power and function. The use of the aforesaid framework of Hohfeld has enabled us to prevent the blurring of idea as propounded by Mr.C.K.Chandrasekar.

64.Hohfeld quotes with approval the view of the House of Lords in ***Howley Park Coal and Cannel Company Vs. London and North Western Railway Company, 1913 AC 11***. Taking strength from the judgment, Hohfeld defines duty as a legal obligation, which one ought



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or ought not to do. Power, on the other hand, is an ability to do. This shows that duty, i.e., function and power operates on entirely different paradigm and cannot be conflated. Hence, the attempt of Mr.C.K.Chandrasekar to combine the two separate jurisprudential aspects into one whole has to be held to be inaccurate and confusing. When the Parliamentary Statute specifically differentiates between “function” and “power”, as is clear from a casual reading of Sections 6 and 35, we have to reject this argument.

On Ancillary & Incidental Power:-

65.We should point out that there is a fundamental difference in law between ancillary and incidental powers, and ancillary and incidental functions.

66.An ancillary power provides assistance to the primary power. This power has to be subservient to the main power and is exercised only for the purpose of its effective implementation. Incidental powers, on the other hand, are those which are logically connected to the main power as a direct consequence. They are inherent in the grant of the main power.

67.Ancillary function are those supporting tasks that are not the main purpose of statutory body, but are necessary for it to operate.

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Incidental functions are minor tasks that have to be performed while performing the main function.

68.Courts have used the doctrine of incidental and ancillary powers to prevent rigid interpretation of laws. To give an example, if the legislature has a power over a subject, it is bestowed with all the powers without which the original power itself would be unavailable. When Section 6 speaks about functions, it would do violence to the statute to read it as an ancillary power.

Applicability of the General Clauses Act, 1897:-

69.Mr.C.K.Chandrasekar then appeals to Section 16 of the General Clauses Act, 1897, (“General Clauses Act”) and urges that, the Bar Council exercises the power of appointment of Lawyers and, therefore, by virtue of Section 16 of the said Act, it includes the power of removal as well as the power to place them under interim suspension.

70.Section 16 of the General Clauses Act confers a power on an appointing authority, unless a different intention appears, to suspend or to dismiss any person in exercise of that power. This is a statutory recognition of the doctrine of incidental powers. An authority which has the power to appoint, is ordinarily deemed to have the incidental



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power to suspend. A reading of the Advocates Act shows that a Bar Council does not appoint a person as a lawyer. It only registers a qualified person, if he so desires, entering his name in the rolls maintained by it. As early as in ***R.P.Kapur Vs. Union of India and another, AIR 1964 SC 787***, a Constitution Bench of the Supreme Court held that for Section 16 to apply, there must exist a relationship of employer and employee.

71.Furthermore, “appointment” means selection of a person to an office. By virtue of the Advocates Act, there is neither a selection by the Bar Council, nor is there an appointment.

72.By the very nature of the profession, no such relationship exists between an advocate and the Bar Council. Under Section 6(1)(a) of the Advocates Act, the Bar Council discharges its function of admitting persons as an Advocate on its rolls. The manner in which this function is discharged is set out under Section 24 of the Act. A perusal of Section 24 shows that there is no employer – employee relationship between an Advocate and a Bar Council. Let us now see the various tests which determine a relationship as that being an employer – employee.



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73. Courts have evolved several tests, in order to determine when an employer – employee relationship exists. For the sake of appreciation, we will discuss them as below:-

(i) Control Test:-

This is a traditional test adopted by the Court to determine the relationship between the parties. When the hiring party, not only has the power to control the work that is done, but also the manner and means by which it has to be accomplished, it is established that there is a master-servant relationship. The more control exercised by the hiring party, the more likely the relationship of employer – employee exists. An Advocate is not paid by the Bar Council during the course of practice. The Bar Council cannot dictate as to how an Advocate should conduct a matter entrusted to him. In any event, the Bar Council does not control how an Advocate, who is enrolled on its role, should perform his / her duties. We hasten to add this does not mean that the Code of Conduct of the profession does not apply to a lawyer. The breach of the Code, and in some cases an egregious breach, can amount to professional or other misconduct. In such an event, an Advocate opens himself up to be proceeded under Section 35 of the Act. Yet, it does not result in the creation of an employer – employee relationship. As to how the Bar Council should proceed



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before visiting an Advocate with the punishment as contemplated under Section 35(3), has also been laid down by the Parliament. This shows that, the Bar Council is neither an employer, nor is an Advocate, an employee of the Bar Council.

(ii)Integration / Organisation Test:-

*Another test evolved by the Courts is the integration or the organisation test. Under this test, the Court examines the role of the person alleged to be an employee and determines whether it is integral to the core operations of the organisation. If the work performed by a person is a part and parcel of the organisation's main functions, then the former is more likely is to be held to be an employee.

*A mere reading of the integration or the organisation test makes it clear that the role of an Advocate, his duties to his client, his opponent and to the Court, are no way connected to the work of the Bar Council in terms of Section 6.

(iii)Multi-factor/Economic Reality Test:-

With the passage of time, the Courts have also evolved another test called the multi factor or economic reality test. This test combines elements of control and integration test set forth above, along with additional factors, to determine the person's economic dependence on



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the alleged employer. Between an Advocate and a Bar Council, none of the following key determining factors are satisfied.

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(a)Power of hiring and dismissal:-

An Advocate is not hired by the Bar Council, but a person qualified applies for enrollment and registers himself / herself, in order to represent another's cause before the Courts of law or authorities.

(b)Payment of wages:-

No Advocate is paid wages by the Bar Council for performance of his / her duties. Therefore, this factor is also not satisfied.

(c)Control and supervision:-

A bare perusal of the Advocates Act instructs that the Bar Council neither controls nor supervises and directs the work of an Advocate.

(d)Provision of tools / equipments:-

This is a key determining factor for concluding the relationship of an employer – employee. If a person provides the necessary tools, materials and workplace to another, then the Courts normally



presume a relationship of employer – employee. None of the above are provided by the Bar Council to an Advocate.

(iv) Exclusivity or continuity of service:-

Another test is exclusivity or continuity of service. This test examines whether a person is exclusively tied to another, whether he / she is free to work for other independent enterprise. If the person is exclusively tied to another and is not free to work for others, then the Court holds such a person to be an employee. Clearly, this test also does not apply to Advocates.

74. These tests have been set out above, because the focus of the Court is on the substance of the relationship rather than any label that may be given. The Advocates Act, in substance, deals with the maintenance of rolls of Advocates and ensures standards of the legal profession are maintained and upheld.

75. Apart from this aspect, even if we were to accept the plea of Mr.C.K.Chandrasekar that there exists a relationship of employer – employee between an Advocate and the Bar Council, reliance on Section 16 overlooks the fact that Section 16 itself states that, it will apply only when the statute or the Rules do not show a contrary



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intention. If the parent statute expressly limits or locates the disciplinary power elsewhere, then Section 16 will not override it. The manner in which the punishment is to be meted out for a lawyer is set forth under Section 35. Similarly, the disciplinary power of the Bar Council of India is set forth under Section 36.

76.The subtle distinction between Section 35 and Section 36 is that in case of an advocate enrolled in a State Bar Council, the initial power of taking disciplinary action is with that Bar Council. Section 36 operates when the name of an Advocate is not entered in any of the State Rolls. The original disciplinary authority is the State Bar Council. The statute, under Section 36B, empowers the Bar Council of India to dispose of the same only if a period of one year from the date of initiation of complaint lapses. In such an event, the proceeding is deemed to be transferred to the Bar Council of India by virtue of Section 36(2) read with Section 36B(1) of the Advocates Act. Hence, when a contrary intention appears in the statute in form of Sections 35 & 36, the plea of Mr.C.K.Chandrasekar that Section 16 of the General Clauses Act, applies is absolutely misconceived.

77.The view taken by us that there does not exist a relationship of an employer and employee between an Advocate and a Bar Council

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is not a solitary one. A very recent judgment of the Bombay High Court in ***UNS Women Legal Association (Regd.) Vs. Bar Council of India and others, 2025 SCC OnLine Bom 2647***, lends support to our view. The Bench consisting of Justice Alok Aradhe, (C.J.) [as His Lordship then was] and Justice Sandeep V.Marne, took a view that, neither the Bar Council of India nor the Bar Council of Maharashtra and Goa can be said to be the employers of Advocates. We respectfully adopt the view expressed by the Division Bench.

Whether there is a power of Interim Suspension can be read into the Advocates Act, 1961?

78.Mr.C.K.Chandrasekar urged that though the power of interim suspension has not been included in the Advocates Act by the Parliament, Courts have introduced such a power by way of interpretation and, hence, we have to adopt the said view.

79.We will deal with the judgments later. However, we should point out that in the earlier part of the judgment, we have in detail discussed the history of the profession. It was also pointed out that, the colonial legislature had included a provision for interim suspension under Section 14 of the Legal Practitioners Act, 1879, and it was undoubtedly directed against Pleaders and Mukhtars. When the

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Parliament enacted the Advocates Act, 1961, by virtue of Section 50(4), the said provision ceased to operate. The Parliament made it clear that, on and from the date on which Chapter-V comes into force, the provisions from Sections 12 to 14, 21 to 24 and 39 and 40 of the Legal Practitioners Act and so much of Section 16, 17 and 41 of that Act which relate to suspension, removal or dismissal of legal practitioners, cease to operate. Chapter-V came into force with effect from 01.09.1963. This shows that the Parliament had made a conscious decision not to continue with the power of interim suspension that was available with the erstwhile 1879 Act, in the Advocates Act.

80. When the Parliament takes a specific view that the provision must not continue, to expect the Court to introduce it via interpretation is an invitation to the Court to usurp the legislative power, which we are not willing to do.

81. It is a settled position of constitutional law, as well as of legislative interpretation, that Courts cannot usurp legislative functions under the garb of statutory interpretation. Courts cannot add or remove words in a statute, especially where such provisions have been specifically excluded.



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82.It is the duty of the Court to expound the law as it exists and leave any remedy not provided for to the wisdom of the legislature. Even where the language of a statute is ambiguous, the Court can choose the construction that best advances the legislative purpose, but it cannot attempt to rewrite the statute.

83.If this is the power of the Court, then the attempt of Mr.C.K.Chandrasekar to seek the conferment of such power by the Court on the Bar Council is an invitation which we are not willing to accept. At this stage, we have to point out the view of the Supreme Court in ***B.Premanand and others Vs. Mohan Koikal and others, (2011) 4 SCC 266***, the Supreme Court held as follows:-

“10.As held in Prakash Nath Khanna v. CIT [(2004) 9 SCC 686] the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide Delhi Financial Corpn. v. Rajiv Anand [(2004) 11 SCC 625] . Where the legislative intent is clear from the language, the Court should give effect to it, vide Govt. of A.P. v. Road Rollers Owners Welfare Assn. [(2004) 6 SCC 210] , and the Court should not seek to amend the law in the garb of interpretation.

11.As stated by Justice Frankfurter of the US Supreme Court (see Of Law & Men : Papers and Addresses of Felix Frankfurter):



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"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great Judges have constantly admonished their brethren of the need for discipline in observing the limitations. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

84.The aforesaid extract makes it abundantly clear that a Court should not seek to amend the law under the garb of interpreting the statute. Yet again, we would refer to a three Judge Bench of the Supreme Court in ***Union of India and another Vs. Deoki Nandan Aggarwal, 1992 Supp (1) SCC 323***, wherein the Supreme Court had cautioned that a Court should not enlarge the scope of legislation or



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the intention of the legislature when the language of the provision is clear and unambiguous. Laying down the boundaries for the Courts, the Supreme Court held that a Court cannot re-write, re-cast or re-frame the legislation for the very good reason that it has no power to legislate. The Court cannot add words to a statute or read words into it which were never intended by the legislature. Even at the highest, Courts cannot invoke judicial activism to set at naught legislative judgment, as such an action will be subversive of constitutional harmony and the comity of instrumentalities.

85. There is another aspect which we should point out which constrains us not to adopt the view that Mr.C.K.Chandrasekar wants us to take. If the power of interim suspension were to inhere in the Bar Council, as argued by Mr.C.K.Chandrasekar, there would have been no necessity for the Parliament to consider the 2025 bill of amendment to the Advocates Act, 1961.

86. By the Advocates (Amendment) Bill of 2025, the Parliament proposed that in *prima facie* case of serious complaints, the Bar Council of India may immediately place an Advocate under suspension which may be renewed from time to time. This amendment did not bloom into law. The amendments proposed were



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withdrawn by the Government itself, in February, 2025. The aforesaid

aspect shows that in 1961, the Parliament did not want to extend the power of interim suspension, which was available under certain circumstances to the Bar Council of a State or to the Bar Council of India. Further, in 2025, it brought about a bill to amend and provide for interim suspension. The bill was dropped. This indicates that the intention of the Parliament was not to confer the power of interim suspension on the Bar Council of India or on the State Bar Councils. While interpreting an Act, we have to strictly view the stance as it stands, and we cannot give room for fears expressed by Mr.C.K.Chandrasekar and read into the powers that have not been conferred. The ability to confer power on a statutory body is only with the legislature and not with the judiciary.

87.Mr.C.K.Chandrasekar pleads that Bar Council exercises its power when serious allegations are made against an Advocate. However serious the allegations may be, unless and until, the Parliament decides to amend the law and confer such power on the Bar Council of a State or the Bar Council of India, both these statutory bodies have to strictly comply with Sections 35 and 36 of the Advocates Act, respectively.



88.We would here like to refer to the judgment of the Supreme

Court in ***R.Muthukrishnan Vs. Registrar General, High Court of Judicature at Madras, AIR 2019 SC 849***. The petitioner therein challenged the constitutional validity of Section 14A to 14D of the Madras High Court, 1970, made by this Court in exercise of the power under Section 34(1) of the Advocates Act, 1961. After a detailed review of the precedents, Justice Arun Mishra held that Section 34 of the Act does not confer any power on the Court to debar a lawyer for professional misconduct. It was pointed out that the High Court does not exercise disciplinary control over Advocates. Any attempt to do so would amount to usurpation of the power of the Bar Council conferred under the Advocates Act. The Court further pointed out that the High Court has the power to punish an Advocate for contempt and thereafter debar him from practising for a specified period. It was held that without exercising contempt jurisdiction, no punishment can be imposed. We are referring to this judgment to point out that even when the High Court exercises its power to suspend an Advocate from practising before the High Court, the High Court has to first go through the process contemplated under the Contempt of Courts Act, 1971, find him guilty and thereafter pass an order of suspension, if it so desires. The same principle should apply to the Bar Council under the Advocates Act.



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89. Another case at hand is the judgment in ***Mahipal Singh Rana Vs. State of Uttar Pradesh, (2016) 8 SCC 335***. Mahipal Singh Rana was an Advocate, who was found guilty by the Allahabad High Court of criminal contempt, not on one occasion, but on two occasions. He was sentenced to undergo two months simple imprisonment and fine of Rs.2,000/-. The High Court had also directed the Bar Council of Uttar Pradesh to initiate professional misconduct proceedings against him. This was challenged before the Supreme Court. The Supreme Court upheld the conviction for criminal contempt. It pointed out that Courts have the power to regulate the right of audience in Court and that the Bar Council can initiate disciplinary action.

90. The Supreme Court held that Courts can bar a contemnor-advocate from appearing before it, until he or she purge himself / herself of contempt. This power was held to be inherent for maintaining the dignity and order of the Court. We point out to this judgment to show that even Section 24A of the Advocates Act can be invoked only after a person has been found guilty of offences stated therein. Courts do not possess the power, in the interim, to suspend an Advocate accused of criminal contempt of Court. Courts does not

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have power to suspend his / her appearance when he or she continues to be a mere accused in contempt of Court proceeding. If this is the situation, even in the cases of criminal contempt, to say, Bar Council has the power to suspend an advocate pending the enquiry is an attempt to rewrite the Advocates Act.

91.In addition, we would like to point out under Section 42 of the Advocates Act, a disciplinary committee of the Bar Council is vested with the same powers as those of a Civil Court. It is set forth under Section 42(a) to 42(e) of the Act. The power to place an Advocate under interim suspension is not a power conferred upon the disciplinary committee. It is capriciously absent.

92.If a State Bar Council finds the allegations so serious that an Advocate must be suspended, the statute provides a specific power under Section 35 to initiate disciplinary action against him / her, and conclude the proceedings, and thereafter award a punishment of suspension. If at all the Bar Council is of the view that it is necessary in the larger interest of public to suspend the advocate, nothing prevented the authority from passing final orders, on conclusion of the disciplinary proceedings, after following the procedure under the Advocates Act, 1961. The Bar Council cannot claim the power of



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interim suspension for the delay caused in disposal of such proceedings. It is for the Bar Council to take steps to address the reasons for the delay.

93.A classic case at hand is the present one. Mr.R.Jim was placed under interim suspension. When we posted the matter on 07.10.2025, it was represented on behalf of the Bar Council that they had not concluded the proceedings, and that it is now a matter with the Bar Council of India due to the operation of Section 36B. If this Court had not intervened and granted an order of interim stay of the impugned proceedings, the petitioner's livelihood in itself would have been affected, as he would not have practised for more than a period of one year.

94.Apart from that, there is an inherent contradiction in the impugned order. The impugned order reads that the petitioner is suspended till the disposal of the criminal case. The very next paragraph reads that the petitioner is suspended till the disposal of the disciplinary proceedings. While disciplinary proceedings are within the control of the Bar Council, the manner in which the criminal proceedings would have to progress is certainly not under their control. This shows a patent non-application of mind on the part of the respondent.

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95.We now refer to the case laws that have been cited before us.

96.Mr.C.K.Chandrasekar relied upon a famous case in ***Bar Council of Maharashtra Vs. M.V.Dabholkar and others, (1976) 2 SCC 291***. Referring to paragraph Nos.23 & 25, he pleads that, the Bar Council is entitled to act against Advocates who do not conform to the canons of ethics. Hence, on the basis of this judgment, he sought to sustain the order. The facts of that case are relevant. The Bar Council of Maharashtra passed a resolution against one Kelawala and 15 other Advocates charging them with professional misconduct. All the cases were tried together. The disciplinary committee passed an order suspending them from practice for a period of three years. The delinquent lawyers filed an appeal to the Bar Council of India. The Committee appointed under Section 37(2), heard the appeals and absolved them of professional misconduct. Aggrieved by the same, the Bar Council of Maharashtra approached the Supreme Court.

97.During the course of the judgment, Justice V.R.Krishna Iyer, speaking for himself and Justice R.S.Sarkaria, A.C.Gupta and S.Murtaza Fazal Ali, JJ., pointed out the norms and professional ethics that have to be maintained by those in the field of law. He



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bemoaned that practice has been reduced by the delinquent Lawyers to solicitation and profit-making. The observations made in the said judgment relate to the interpretation of Rule 36 of the Standards of Professional Conduct and Etiquette laid down by the Bar Council of India. Nowhere in the judgment did the Supreme Court hold that the Bar Council can suspend an Advocate from practice pending disciplinary enquiry. The judgment itself, as pointed out, arose after a full fledged disciplinary trial that was availed by the lawyers including recording of evidences from witnesses.

98.Mr.C.K.Chandrasekar then referred to the judgment in ***R.D.Vijay Anand Vs. The Secretary, The Bar Council of Tamil Nadu and Puducherry, High Court Campus, Chennai – 104 & another, 2013-5-L.W. 845***. After referring to Section 6(1)(c) and Section 6(1)(i) of the Advocates Act, the learned Single Judge had come to a conclusion that, Section 6 has to be read as power conferred on the Bar Council. Thereafter, he referred to Section 16 of the General Clauses Act, to hold that the power to appoint also includes power to suspend or dismiss, and reached the conclusion that the Bar Council has the power of interim suspension. Finally, he opined that the Parliament had left a gap in the Advocates Act, by not overtly empowering the Bar Council to place an Advocate under

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interim suspension. Hence, he went on to hold that the Court has to take an approach that would provide a workable interpretation, so as to translate the intention of the legislature into action.

99.We are not in a position to agree with the said judgment for the following reasons:-

(i)When Section 6 reads as “functions”, the same cannot be read as a “power”. Such an interpretation would do violence to the Section. The Parliament, while deciding on the functions of a statutory body, will also give it the necessary powers to execute the same. When the Parliament has not done so, it is not for the Courts, as pointed out by the Supreme Court, to amend the Act through statutory interpretation.

(ii)The learned Single Judge did not refer to the judgment of the Supreme Court holding that Section 16 of the General Clauses Act requires relationship of an employer – employee. We have already noticed that the Bar Council is not an employer of an Advocate. We have also noticed several tests that have been evolved by the Courts to determine the existence of such a relationship. The regulatory function of the Bar Council of the legal profession does not clothe it with the colour of an employer.



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(iii) The learned Judge had come to a conclusion as if the Parliament was not aware of the power of interim suspension of Advocates. There is a presumption that when a statute is enacted, the Parliament is not only aware of the earlier laws, but also conscious of the purpose for which the legislation is made. The attention of the learned Judge had not been invited to Section 50 of the Advocates Act, 1961, which repealed the power of interim suspension which existed earlier under Section 14 of the Legal Practitioners Act, 1879.

100. Even if we were to agree with the views of the learned Judge, the caution that he had pointed out in paragraph No.39 of the judgment had not been followed by the Bar Council in the present case. He pointed out that interim suspension should be resorted to, only in the rarest of rare cases. The impugned order does not disclose as to how the case of the petitioner would fall under this category. It was a dispute between two groups of lawyers based on religious differences. It is an unfortunate situation, but it has come to exist. Such a category of case cannot be treated as one falling under “rarest of rare” cases.



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101.The next judgment relied upon by Mr.C.K.Chandrasekar is the case of ***Manikandan Vathan Chettiar and another Vs. Bar Council of Tamil Nadu, 2015-5-L.W. 301.***

102.At the outset, we should point out the learned Single Judge who authored the judgment in ***R.D.Vijay Anand***'s case was a member to this Bench. Even in this judgment, the reference was made to Section 16 of the General Clauses Act, and the interpretation that Section 6 deals with powers and not functions was adopted. The view that we have expressed earlier would apply in this case also.

103.Apart from that, we should point out that ***Manikandan***'s case arose out of contempt proceedings. This court had initiated *suo motu* contempt against one Manikanda Vathan Chettiar. The learned single Judge, who directed such initiation also directed the Bar Council to initiate disciplinary proceedings. Accordingly, the Bar Council initiated disciplinary proceedings in D.C.C.No.46 of 2015. Pending D.C.C.No.46 of 2015, the contemnor was placed under suspension. In the contempt proceedings, he filed an application seeking stay of the order of the Bar Council. The said application came to be dismissed.



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104. We should point out that a Court exercising contempt jurisdiction does not ordinarily go into the merits of the case. The focus of a contempt proceeding is to determine whether the person has been guilty as charged. Even otherwise, an order passed in a stay petition cannot be treated as a binding precedent. We find strength in this view from the judgment of the Supreme Court in **Vishnu Traders Vs. State of Haryana and others, 1995 Supp (1) SCC 461**. The Supreme Court observed as follows:-

“In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach.

105. This view was further amplified by the Supreme Court in **State of Assam Vs. Barak Upatyaka D.U.Karmachari Sanstha, (2009) 5 SCC 694**. Justice R.V.Raveendran held as follows:-

“21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie



findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

22.The observations and directions in *Kapila Hingorani (I)* and *Kapila Hingorani (II)* being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extraordinary power under Article 142 of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human rights violations and seeking a mandamus requiring the State, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of *Kapila Hingorani (I)* and *Kapila Hingorani (II)*.”

106. The views expressed by the Supreme Court, that interim orders do not operate as precedent, have also been expressed by Lord Denning in ***Boys Vs. Chaplin, [1967] EWCA Civ 3.***

107.In addition, we should point out that interlocutory orders do not decide rights and liabilities of parties. An order passed in a stay



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petition is an interlocutory order. As pointed out by the Supreme

Court in **Arjun Singh Vs. Mohindra Kumar and others, AIR 1964**

SC 993, interlocutory orders are of various kinds. Orders of stay, injunction or receiver are designed to preserve *status quo*, pending the litigation and to ensure that parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They do not decide in any manner the merits of the controversy in issue and do not put an end to it, even in part. Such orders are capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which may subsequently emerge.

108.The Supreme Court pointed out that since these orders do not impinge upon the legal rights of parties to litigation, the findings given in these orders will not even attract the principle of *res judicata*.

109.If such is the situation with respect to stay orders which are not binding on parties *inter se*, to state that the order will operate as a binding precedent would be contrary to the views of the Supreme Court set forth above.



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110.Hence, the plea of Mr.C.K.Chandrasekar that the judgment is a precedent is also contrary to the view expressed by the Supreme Court.

111.Mr.C.K.Chandrasekar then turned to the judgment in ***Bar Council of Maharashtra Vs. M.V.Dabholkar and others, (1975) 2 SCC 702***. In this case, a Constitution Bench dealt with the scope of the expression ‘person aggrieved’, as found under Section 38 of the Advocates Act, as amended by Act 60 of 1973. The issue before the Court was whether the State Bar Council, which had initiated disciplinary proceedings, can file an appeal before the Supreme Court against an order passed by the disciplinary committee of the Bar Council of India discharging the delinquents. The Supreme Court concluded that the Bar Council did have the standing to file an appeal, as it would be a “person aggrieved”.

112.We have carefully gone through the judgment. In this judgment too, the Court has not held that the State Bar council can place an Advocate under interim suspension. The issue, as pointed out above, was whether the Bar Council of a State is a “*person aggrieved*” to maintain an appeal before the Supreme Court. The Supreme Court answered the question in affirmative.



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113.Mr.C.K.Chandrasekar then invited our attention to an interim order in Miscellaneous Application Diary No(s).33859/2022 in T.P.(C).No.2419/2019, dated 14.12.2022. He urged that by this order, the Supreme Court had held that the Bar Council has the power of interim suspension. A reading of the interim order shows that, after referring to the judgment in **Manikandan's** case, in paragraph No.8, the Supreme Court had stated that the legal views expressed in the said judgment receives the imprimatur of the Bench. This judgment has not gone into the legal issues that are presented before us. The issue whether the Bar Council has the power to interim suspension was not directly an issue before the Supreme Court. In fact, the Court has lamented that the Police had not performed their duty, owed by them to the Chairman of the Bar Council of India, who had been threatened by certain lawyers. In fact, it is not a final order, because, paragraph No.17 shows the Miscellaneous Application stood adjourned to another date.

114.We should point out that a Constitution Bench of the Supreme Court has laid down the principle as to when a judgment can be treated as a precedent. It is the judgment of the Constitution Bench in **Padma Sundara Rao Vs. State of Tamil Nadu, (2002) 3**
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SCC 533. For ready understanding, we extract paragraph No.9

hereunder:-

*“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”*

115.In the light of the above, we cannot hold an observation made by the Supreme Court during the course of a miscellaneous petition which was not decided as a precedent laying down a proposition of law.

116.Mr.C.K.Chandrasekar then referred to the judgment in ***R.Muthukrishnan Vs. Registrar General, High Court of Judicature at Madras, (2019) 16 SCC 407***. We have discussed this decision in the earlier part of this judgment. In fact, this judgment instead of going in favour of Mr.C.K.Chandrasekar would only assist the petitioner. This is because, Justice Arun Mishra has held even a



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Constitutional Authority like High Court can prevent an Advocate from practising before it only after it finds him guilty of contempt.

Having come to the conclusion, the amendment made to Rule 14A to 14D of Madras High Court Rules, 1970, were struck down as *ultra vires*. If the High Court does not possess the power to place a person under suspension pending a contempt proceeding, certainly the Bar Council, unless and until, specifically conferred with such power cannot exercise the same.

117.Finally, Mr.C.K.Chandrasekar referred to the judgment in ***K.Sathyabal & others Vs. Bar Council of Tamil Nadu and Puducherry, 2016-2-L.W. 230***. The issue before the Bench was whether the Chairman of the Bar Council of Tamil Nadu and Puducherry could pass an order prohibiting Advocates from practising in any Court till the conclusion of the disciplinary proceedings and, secondly, the initiation of the proceedings itself. The Division Bench held that the disciplinary committee being a creature of the Bar Council, the Bar Council could do anything that the disciplinary committee can do. It further held that under Section 48-B of the Advocates Act, the Bar Council of India can give directions to the State Bar Council, as it is an exercise of general power of supervision and control over the State Bar Council. Having come to this conclusion,



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the Court held that since the order of the Chairman contained an averment to the effect that the papers relating to the suspension has been circulated to the other members by e-mail as well as by courier and since, majority of the members had agreed with the Chairman, the order is valid. The specific issue with respect to the jurisdiction of the Bar Council to place an Advocate under interim suspension was not examined by the Division Bench. Furthermore, we have to point out the petitioners were non suited on the ground of acquiescence.

118.Finally, the Division Bench itself had held in paragraph No.43, that extraordinary situation demands extraordinary remedies and that, merely because the petitioners establish a legal right, the Court need not exercise the discretion in their favour, as it will depend upon the facts and circumstances of the case. The very fact that the learned Judges took note of the nature of the situation wherein the functioning of the Courts in Tamil Nadu had been left to the mercy of a few lawyers, requiring the Bar Council to initiate action, shows that the Bench did not lay down the position of law as a precedent, but only in order to answer the situation that arose before it. The finding in paragraph No.43 clearly shows that the Bench did not intend to lay down the position of law as urged by Mr.C.K.Chandrasekar.



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119. We have to point out at this stage that a similar situation arose before two other High Courts. The first such instance arose before the **Orissa High Court in Girija Prasanna Panda Vs. Orissa State Bar Council and others, (2002) 1 CCC 175**. The Division Bench consisting of R.K.Patra and P.K.Misra, JJ., held that the Bar Council's duty is to admit an Advocate on Roll and to entertain and determine cases of misconduct against the Advocate. The Bench pointed out that the disciplinary committee could inflict any penalty as prescribed under Section 35(3) of the Advocates Act, but has no power to pass any interim order imposing penalty (Paragraph No.8).

120. Very recently, a learned Single Judge of Punjab and Haryana High Court was presented with a similar situation in **Vijay Bharat Verma Vs. Bar Council of Punjab & Haryana, 2020 SCC OnLine P & H 2118**. The learned Single Judge, after an entire survey of the proceedings of the Act, held that a body created by a statute must conform to the provisions of the regulating statute. When Section 35 of the Advocates Act specifies that the disciplinary committee of the Bar Council can take an action, then the said body has only those powers granted expressly or by implication of the statute. Justice Alka Sarin, held that there is no specific or implied



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power conferred on a State Bar Council under the 1961 Act, to take punitive action against an Advocate while simultaneously referring a complaint against him to the disciplinary committee. On the basis of this discussion, the learned Judge came to a conclusion that the order placing an Advocate under suspension was *ultra vires* the powers conferred under the Advocates Act, 1961, as well as the Rules made thereunder and consequently, quashed the same (Paragraph Nos.46 & 51).

121.We should point out here that, the Bar Council of Punjab and Haryana preferred an appeal against the order of the learned Single Judge to a Division Bench. This was in LPA.NO.910 of 2020 (O&M). The appeal was dismissed as withdrawn on 08.04.2022, thereby the order of the learned Single Judge stood affirmed by withdrawal.

Decision

122.In the light of the above discussion, we are of the view that the Bar Council of Tamil Nadu and Puducherry does not have the power to place a person under interim suspension pending disciplinary enquiry. We hold as follows:-



(i)The Advocates Act has not conferred the power on the Bar Council to place an Advocate under suspension pending disciplinary enquiry;

(ii)By an act of interpretation, the Courts cannot expand the powers of a statutory body which has not been specifically conferred;

(iii)When the Advocates Act, under Section 35 contemplates a procedure of issuance of notice, framing of charges, due trial and hearing before passing an order of suspension, an *ex parte* interim order does not pass muster;

(iv)When Section 6 of the Advocates Act, 1961, reads as “functions” of the Bar Council, the same cannot be interpreted as conferring “powers” on the Bar Council;

(v)In any event, as the order is inherently contradictory and one passed without hearing the writ petitioner, the same is quashed.



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123. Accordingly, the Writ Petition stands allowed. Consequently,

the connected miscellaneous petition is closed. No costs.

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(M.S.R., J)

(V.L.N., J)

19.12.2025

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Index : Yes

Internet : Yes

Speaking Order : Yes

Neutral Citation : Yes



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To

The Secretary,
Bar Council of Tamil Nadu and Puducherry,
High Court Campus,
Chennai – 600 104.



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M.S.RAMESH, J.

and

V.LAKSHMINARAYANAN, J.

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W.P.No.31727 of 2024 and
W.M.P.No.34470 of 2024

19.12.2025