

**God Himself Gave Opportunity Of Hearing To Adam & Eve Before Passing Sentence: Karnataka HC Quashes BCI's Order Suspending Ex-KSBC Head's Practice**

**2022 LiveLaw (Kar) 469**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**M. NAGAPRASANNA; J.**  
**WRIT PETITION NO. 20983 OF 2022; 17 NOVEMBER, 2022**  
**K.B. NAIK versus BAR COUNCIL OF INDIA**

*Petitioner: P.P. Hegde, Sr. Advocate, Adv. Sagar G. Nahar*

*Respondents Advs. Shridhar Prabhu, Gautham A.R., Kethan Kumar*

**ORDER**

The petitioner is before this Court calling in question order dated 26-09-2022 passed by the Bar Council of India in Revision Petition No.45 of 2022 directing suspension of the petitioner from practicing law in any Court in the country during the pendency of the revision petition.

**2.** Heard Sri P.P.Hegde, learned senior counsel appearing for the petitioner; Sri Shridhar Prabhu, learned counsel appearing for respondent No.1; Sri A.R. Goutham, learned counsel appearing for respondent No.2 and Sri Kethan Kumar, learned counsel appearing for respondent No.3.

**3.** Shorn of unnecessary details, the facts in brief, are as follows:-

The petitioner is an Advocate enrolled with the Bar Council of Karnataka and claims to have put in 28 years of practice. He further claims that he was a former Chairman of Karnataka State Bar Council and is a sitting Member of the said Council. One Sri Basavaraju Murugesh Jarali another practicing Advocate registers a complaint before the Karnataka State Bar Council alleging certain acts of misconduct said to have been committed by the petitioner making reference to certain legal proceedings. The legal proceedings were concerning O.S.No.14 of 2008 and Regular Appeal No.334 of 2019. The allegation against the petitioner in the said complaint was that a criminal case had been registered against one Basavaraddi Venkateddi Chulaki and other family members for offences punishable under Sections 341, 504, 506 and 302 of the IPC, who had engaged the services of the petitioner as their legal counsel. On registration of the said crime, the accused therein were in custody from the date of arrest till the date of their acquittal by the learned Sessions Judge in Sessions Case No.39 of 2007, which comes about on 28.03.2008. After the acquittal and release of Sri Basavareddi Venkateddi Chulaki, claims to have come to know that the petitioner had created certain General Power of Attorney and sold the property without the knowledge of Sri Basavareddi Venkateddi Chulaki.

**4.** This resulted in institution of a suit in O.S.No.14 of 2008 seeking declaration of the sale deed being null and void and not binding on Sri Basavareddi Venkateddi Chulaki. The suit was decreed. This was challenged by the purchaser of the said property in R.A.No.135 of 2012. The Appellate Court remitted the matter back to the trial Court to implead necessary parties and then pass appropriate orders. While doing so, the present petitioner was impleaded into O.S.No.14 of 2008. The allegations against him were that he had misused the signatures of Sri Basavareddi Venkateddi Chulaki. The suit again came to be decreed in favour of the plaintiff therein on 26-04-2019 and certain observations were made against the petitioner.

5. The moment the decree comes to be passed, a complaint comes to be registered before the 2<sup>nd</sup> respondent/Karnataka State Bar Council on 28-09-2021 by the complainant – respondent No.3. Explanation was sought by the 2<sup>nd</sup> respondent pursuant to which the petitioner submitted his explanation refuting all those allegations made in the complaint and also brought to the notice of the 2<sup>nd</sup> respondent that he had challenged the judgments and decrees passed in O.S.No.14 of 2008 and R.A.No.334 of 2019 before this Court in R.S.A.No.100383 of 2021 and this Court had admitted the appeal and stayed the operation of the judgments and decrees of the trial Court as well as the appellate Court. The 2<sup>nd</sup> respondent noticing this fact, closed the proceedings against the petitioner. On such closure of the proceedings, the complainant approaches the 1<sup>st</sup> respondent/Bar Council of India invoking its revisional jurisdiction under Section 48A of the Advocates Act, 1961 ('the Act' for short). The 1<sup>st</sup> respondent appears to have sent a video conference link, who failed to appear and without hearing the petitioner, on 26.09.2022 it passed an order that the petitioner is barred from practicing in any court of law during the pendency of the revision petition. This order dated 26-09-2022 is served upon the petitioner on 19.10.2022. Immediately, the petitioner has knocked the doors of this Court in the subject petition calling in question the order dated 26-09-2022. This Court by its interim order dated 21-10-2022 stayed the operation, execution and all further proceedings to the order dated 26-09-2022 passed by the 1<sup>st</sup> respondent and the same is in operation as on date.

6. The learned senior counsel appearing for the petitioner would contend that the complaint against the petitioner was closed in accordance with law. Section 48A of the Act itself mandates that no order which is prejudicially affecting any person shall be passed without giving him a reasonable opportunity of being heard in the revision petition. The observation in the impugned order is that, a video conference link had been sent to the petitioner and despite it, the petitioner has not appeared and the order comes to be passed. The learned senior counsel would submit that the order cannot be an order in consonance with sub-section (2) of Section 48A of the Act as it is in blatant violation of the principles of natural justice.

7. The learned counsel representing the 1<sup>st</sup> respondent/Bar Council of India has no answer to the query of the Court with regard to an opportunity being afforded to the petitioner.

8. The learned counsel appearing for the complainant would also follow suit in failing to demonstrate that the petitioner was given any opportunity of hearing, but would seek to submit that it is not at this stage that the petitioner should be afforded an opportunity of hearing, but it is only when a final order would be passed. Since this is only an order at the interim stage, an opportunity of hearing need not be given and it is always open to the petitioner to seek vacation of the interim order by appearing before the 1<sup>st</sup> respondent.

9. I have given my anxious consideration to the submissions made by the respective learned counsel appearing for the parties and perused the material on record. In furtherance whereof the only issue that falls for consideration is, ***“whether an order suspending practice of an Advocate in any Court of law, could have been passed without hearing him, albeit at an interim stage”?***

10. A complaint comes to be registered on the basis of certain observations made by the trial Court in O.S.No.14 of 2008 and the first Appellate Court in R.A.No.334 of 2019. Based on those observations in the said civil proceedings, the complainant registers a complaint after dismissal of regular appeal on 28-09-2021. The complaint is to the effect that the petitioner who was an Advocate of the family members of the complainant had misused the confidence reposed on him and had created certain documents

misusing/forging the signature of Mr. Basavareddi Venkatgeddi Chulaki. The aforesaid judgments and decrees passed by the trial Court and first Appellate Court have been challenged by the petitioner, insofar as observations made against him are concerned in R.S.A.No.100383 of 2021, before this Court. This Court by its interim order dated 22-02-2022 passed the following order:

**“IN RSA.No.100190/2022**

*Heard learned Senior Counsel Sri V.P.Hegde for learned counsel appearing for the appellants and perused the judgments under challenge.*

*The captioned second appeal in RSA.No.100190/ 2022 is filed by defendant No.5 who claims that he has purchased the suit schedule property under a registered sale dated 31.12.2016. Learned Senior Counsel would submit to this Court that both the Courts have ignored the provisions of Rule 166 of the Karnataka Prison Rules 1974 (“the Rules” for short). Placing reliance on Rule 166 of the said Rules, the learned counsel would submit to this Court that both the Courts have got swayed away by the fact that, the disputed GPA was executed while plaintiff was in judicial custody.*

*More emphasis is laid on this fact and both the Courts have concurrently doubted the genuineness of GPA. Prima facie this Court would find that the finding of the Both the Courts below that GPA came to be secured without securing permission from the Court appears to be erroneous and therefore requires reconsideration at the hands of this Court.*

*Therefore the appeal is admitted to consider the following substantial question of law in the present appeal.*

*“Whether the findings of the Courts below that the 2nd defendant has failed to prove the power of attorney in his favour said to have been executed by the plaintiff is perverse, palpably erroneous and contrary to Rule 166 of the Rules coupled with the fact that the plaintiff has not chosen to cross-examine the Notary as well as Jail Superintendent who were examined as DWs.2 and 3 respectively?*

*Counsel submission in regard to office objection at Sl.No.4 is accepted. Office objection is over ruled.*

**IN RSA.No100383/2021**

*The appeal is admitted to consider the following substantial question of law.*

*Whether the finding of the Courts below that GPA dated 06.10.207 is created and concocted by appellant/defendant No.4 is perverse palpably erroneous and contrary to Rule 166 of the Rules coupled with Section 85 of the Indian Evidence Act when admittedly the plaintiff having seriously disputed the GPA has not chosen to cross-examine the Notary and as well as Jail Superintendent and therefore the presumption which is available under Section 85 of the Indian Evidence Act has stood unrefuted?*

*Counsel submission in regard to office objection at Sl.No.1 is accepted. Office objection is over ruled.*

*It is stated by the learned Senior Counsel that the plaintiff based on decree passed by the Courts below has set decree in execution by filing*

*EP.No.74/2021 on the file of the Senior Civil Judge, Saundatti. Since the matters are admitted and the controversy between the parties needs reconsideration at the hands of this Court, I am of the view that the judgments and decree of the Courts below needs to be stayed.*

*Accordingly, I.A.No.1/2021 in RSA.No.100190/ 2022 and I.A.No.1/2022 in RSA.No.100383/2021 are hereby allowed.*

**Hence, operation and execution of the judgment and decree dated 26.04.2019 passed in O.S.No.14/2008 on the file of Senior Civil Judge, Saundatti and judgment and decree dated**

**15.06.2021 passed in R.A.No.334/2019 by the XI Additional District and Sessions Judge, Belagavi are stayed till the next date of hearing.**

*Paper books to be filed by twelve weeks.”*

*(Emphasis supplied)*

Therefore, the operation and execution of the judgment and decree remain stayed and the said interim order is in operation. In the interregnum i.e., between dismissal of Regular Appeal and the interim order dated 22-02-2022 the complainant registers the complaint on 28-09-2021. Explanation was sought by the 2<sup>nd</sup> respondent from the petitioner who was then Member of the Executive Committee of the Karnataka State Bar Council. He submits his explanation bringing to the notice of the 2<sup>nd</sup> respondent that he has challenged the judgments and decrees supra which contained certain observations against him before this Court and this Court has admitted the second appeal, stayed the operation and also submitted that the complainant who is also an Advocate cannot be claiming to be an aggrieved person by the judgments and decrees and, therefore, sought closure of the complaint.

**11.** The complaints filed before the 2<sup>nd</sup> respondent/Bar Council are to be dealt with under Section 35 of the Act. Section 35 of the Act reads as follows:

*“35. **Punishment of advocates for misconduct.**— (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.*

*(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.*

*(2) The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.*

*(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—*

*(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council,*

*direct that the proceedings be filed;*

*(b) reprimand the advocate;*

*(c) suspend the advocate from practice for such period as it may deem fit;*

*(d) remove the name of the advocate from the State roll of advocates.*

*(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.*

*(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.*

*Explanation.—In this section, section 37 and section 38, the expressions “Advocate-General” and Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.”*



Where on receipt of a complaint or otherwise the State Bar Council has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. If the order is passed by a disciplinary committee dismissing the complaint, the complainant will have an opportunity of filing an appeal to the Bar Council of India under Section 37 of the Act against an order under Section 35 of the Act. In the case at hand, the matter was not placed before the Disciplinary Committee, but was closed by the counsel. The remedy of appeal was not available. In such circumstances, the remedy available to the complainant under the Act is to file a revision before the Bar Council of India under Section 48A of the Act. Section 48A of the Act reads as follows:

*“48A. Power of revision.—(1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.*

***(2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.”***

*(Emphasis supplied)*

Section 48A mandates that the Bar Council of India may at any time, examine an issue from which no appeal lies for the purpose of satisfying itself as to the legality and propriety of disposal of the complaint by the State Bar Council. Sub-section (2) of Section 48A mandates that no order which prejudicially affects any person shall be passed under Section 48A without affording a reasonable opportunity of being heard. It is the interpretation of Section 48A that forms the fulcrum of the issue in the case at hand.

**12.** As observed hereinabove, the complaint comes to be closed by the State Bar Council and the complainant approaches the Bar Council of India under Section 48A of the Act. Exercising its revisional jurisdiction under Section 48A, the Bar Council of India passes an order on 26-09-2022, certain paragraphs thereof are germane to be noticed and they are extracted hereunder for the purpose of quick reference:

*“25. With that being the said it is necessary for this Committee to see whether the complaint prima facie makes a case for professional misconduct. The word “**Professional Misconduct**” needs to be interpreted in a wide manner. The Hon’ble Supreme Court in the case of “*Noratanment Courasia v. M.R.Murali – (2004) 5 SCC 689*” observed that the word professional misconduct is in wide amplitude and that the term misconduct cannot be given any precise definition. It is important to note the allegations against the 2<sup>nd</sup> respondent herein is that he misused the faith of his client and utilized the same to get illegal benefit, the petitioner makes out a case for willful misrepresentation and further the complaint makes out a case that the 2<sup>nd</sup> respondent herein misused the faith reposed on him by his client and misused his position as a lawyer by obtaining signatures from Mr. Basavaraddi Venkareddy Chulaki while he was in judicial detention. Thus, the complaint at prima facie makes out a case for dereliction of duty and misrepresentation of facts to his clients and that of giving improper advice to his client.*

.....

**29. It was informed by the registry that the notice in compliance of Section 48A(2) of the Act has been sent to the 2<sup>nd</sup> respondent and further the video conferencing link was also sent to the 2<sup>nd</sup> respondent, despite of the same the second respondent has refrained from appearing before this Committee.**

... ..

**34. Thus relying upon the aforesaid judgments of the Hon’ble Courts, we think it is the duty of this Hon’ble Committee to uphold the dignity and decorum of the profession, it is**

***needless to say serious allegations are levelled against the second respondent herein that he has influenced the decision of the State Bar Council. The conduct of the 2<sup>nd</sup> respondent herein seems to be unbecoming a professional. Considering the following factual aspects and legal issues raised in this case, we think its fit to frame the following issues:***

***1. Whether a case of professional misconduct is prima facie bring made out in the complaint?***

***2. Whether the impugned resolution passed by the 1<sup>st</sup> respondent Council is sustainable in the eye of law?***

***35. Hence taking note of all these aspects as well as the observations made by the Hon'ble Lower Court and Hon'ble 1<sup>st</sup> Appellate Court and also by analyzing the factual aspects of the case in the interest of justice and also taking note of the conduct of the 2<sup>nd</sup> respondent herein, we hereby suspend the 2<sup>nd</sup> respondent herein from practicing in any Court of law during the pendency of this Revision Petition.***

***36. In interest of justice we once again issue notice to the respondents herein, notice issued is returnable within a period 4 weeks. Post the matter after 4 weeks."***

*(Emphasis supplied)*

The order which had such dire consequences is not even sought to be communicated to the petitioner. The order is communicated on 17-10-2022 only to three members – one the complainant, the other the Karnataka State Bar Council and the 3<sup>rd</sup> the Advocates for the complainant before the Bar Council of India. The petitioner is the kernel of the complaint, notwithstanding that the order is not communicated to the petitioner. The impugned order which has grave civil consequence on the petitioner is passed at the outset, without hearing him and even communicating it to him. The petitioner comes to know of it when the order reaches the State Bar Council.

**13.** The issue now, is whether under Section 48A such an order could be passed, in blatant violation of principles of natural justice and mandate of the statute. Sub-section (2) of Section 48A mandates that no order which prejudicially affects any person shall be passed under Section 48A without affording him a reasonable opportunity. The observation in paragraph 29 of the order extracted supra is that a video conferencing link was sent to the petitioner and he did not appear and therefore, the order is passed. At paragraph 36 again the impugned order observes that to grant him an opportunity, another notice is sent. Therefore, it is a clear case where the petitioner was not heard and an order which, on the face of it, prejudicially affects him, is passed without hearing. The submission that the order is only an interim order, it would not become an order that is depicted in sub-section (2) of Section 48A, is noted only to be rejected, as it is fundamentally flawed. Order, would mean, each and every order that would prejudicially affect any person. The prejudice caused in the case at hand is, taking away the livelihood of the petitioner as he is barred from practicing in any Court of law. Therefore, an order as observed in subsection (2) of Section 48A would mean any order either interim or final which would prejudicially affect the person. If it is affecting the person or would result in any civil consequence, such an order cannot and ought not be passed without, at the outset, complying with the principles of natural justice.

**14.** The concept of *audi alteram partem* which forms the bed rock of the principles of natural justice is not evolved ages ago or to-day. It is evolved beyond the dim mist of eternity. It is said, God himself did not pass any sentence on Adam before calling upon him to make his defence for the act of having consumed the proscribed fruit in the Eden Garden. Therefore, God himself gave an opportunity of hearing to Adam and Eve before passing the sentence for consumption of the forbidden fruit. The principle has emerged

since then. Thus, it is not today that this concept exists; it is as early as humanity. The said principle is since then chiseled, honed and refined, and judicial treatment by Courts of law has rendered luminosity to the said principle. Principles of natural justice is a concept that has been evolved by courts of law even in areas where no opportunity of hearing is provided under the statute. The concept has been read into those statutes for minimum protection of rights of an individual against any arbitrary procedure that may be adopted by a judicial, quasi judicial or administrative exercise of power while determining rights of parties.

**15.** The rule of natural justice is intended to prevent such power from doing injustice. Therefore, adherence to principles of natural justice is recognized by all civilized States and civilized societies to be imperative, to be followed, when any judicial, quasi judicial or administrative body embarks upon determining the dispute between the parties or any order that would be passed resulting in civil consequences. As observed hereinabove, the bedrock of such acts are the principles of *audi alteram partem* and *fair play in any action*. Fair play in action is in effect grant of a fair hearing; fair hearing would be to have notice of the other sides case; right to bring evidence and right to argue. If these are not provided, the Court would step into nullify such acts, be it quasi judicial or administrative. It is germane to notice this concept being considered by the Apex Court in *Sirsi Municipality v. Cecelia Kom Francis Tellis* - (1973) 1 SCC 409 wherein it is observed as follows:

***“43. ... ‘9. ... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.’***

*(Emphasis supplied)*

In *Maneka Gandhi v. Union of India*<sup>1</sup>, a seven-Judge Bench of the Apex Court again observes as follows:

***“8. ... ‘... although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.’ (Cooper case [Cooper v. Wandsworth Board of Works, (1863) 14 CB (NS) 180: 143 ER 414], p. 420) The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. ...***

***9. ... Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. ... The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?”***

*(Emphasis supplied)*

In the light of the admitted fact that the petitioner was not heard in the matter and the impugned action being contrary to sub-section (2) of Section 48A of the Act and it being in blatant violation of the principles of natural justice, I deem it appropriate to

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<sup>1</sup> (1978) 1 SCC 248

obliterate the order dated 26-09-2022 and remit the matter back to the Bar Council of India, to hear the petitioner, his defence, and then pass appropriate orders in accordance with law.

**16.** For the aforesaid reasons, I pass the following:

**ORDER**

- (i) The writ petition is allowed.
- (ii) The impugned order dated 26-09-2022 passed in Revision Petition No.45 of 2022 by the Bar Council of India stands quashed.
- (iii) The matter is remitted back to the hands of the Bar Council of India who shall hear the petitioner, afford him a reasonable opportunity of defence, conduct proceedings in accordance with law and pass appropriate orders in consonance with law after considering the defence of the petitioner.
- (iv) Since the petitioner and the 1<sup>st</sup> respondent are represented before this Court, the petitioner shall appear before the Bar Council of India on 19.12.2022.
- (v) The Bar Council of India is free to regulate its procedure on appearance of the petitioner on 19.12.2022.
- (vi) All contentions of both parties shall remain open.

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