

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No. 26174 of 2023**

**Somabrata Mandal  
Vs.  
Bar Council of West Bengal and others**

For the petitioner	:	Mr. Ajoy Krishna Chatterjee, Mr. Tapas Banerjee, Mr. Siddhartha Bhattacharyya, Ms. Priyanka Chowdhury, Mr. Soumajit Chowdhury
For the Bar Council of West Bengal	:	Mr. Abhratosh Majumder, Mr. Avra Mazumder, Mr. Samrat Das
For the respondent nos. 3 & 4	:	Mr. Abhrajit Mitra, Mr. Sarvapriya Mukherjee
Hearing concluded on	:	05.12.2023
Judgment on	:	13.12.2023

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner lodged a complaint against the private respondents before the State Bar Council of West Bengal. Such complaint was received by the State Bar Council on November 3, 2023. It is argued by the petitioner that the cut-off date for disposal of the said complaint as per Section 36B of the Advocates Act, 1961 was one year from the date of the receipt of the complaint. It is stipulated in Section 36B(1) of the said Act that failing such disposal, the

proceedings shall stand automatically transferred to the Bar Council of India, which may dispose of the same as if it was a proceeding withdrawn for enquiry under Section 36(2) of the Act. In the present case, it is argued that the statutory period of one year has elapsed as on date and the matter be directed to be transferred to the Bar Council of India. The orders passed subsequent to the cut-off date of one year (which expired on November 2, 2023) by the State Bar Council are, accordingly, bad in law.

2. The matter has been referred to the Disciplinary Committee by the State Bar Council only recently for adjudging the maintainability of the same. It is argued that it is beyond the jurisdiction of the Disciplinary Committee to decide the issue of maintainability as well.
3. Learned senior counsel for the petitioner places reliance on Section 35(1) of the said Act. It is contended that the same envisages a reference to the Disciplinary Committee. Sub-section (1) of Section 35, provides that where on receipt of a complaint or otherwise a State Bar Council has “reason to believe” that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.
4. It is argued that the formation of an opinion under Section 35(1) regarding having reason to believe that there has been a professional or other misconduct, is a pre-requisite for reference of the case for disposal to the Disciplinary Committee. Hence, a reference to the Disciplinary Committee *per se* incorporates a prior preliminary adjudication as to the maintainability of the complaint of professional

or other misconduct. In the present case, the matter has already been referred to the Disciplinary Committee and, as such, the State Bar Council must have presumably formed an opinion that it has reason to believe that the private respondents are guilty of professional or other misconduct. The same issue cannot be adjudicated afresh by the Disciplinary Committee in the garb of maintainability of the complaint.

5. Learned Senior Counsel cites *Achal Saxena (dead) and Anr. Vs. Sudhir Yadav*, reported at (2017) 13 SCC 657, where it was held that in view of Section 36B of the Act, the State Bar Council was obliged to transfer the enquiry to the Bar Council of India after expiry of one year from the receipt of the complaint.
6. Learned senior counsel appearing for the respondents controverts the submissions of the petitioner and argues that the commencement of the time-limit of one year as per the contemplation of Section 36B is the date of receipt of the complaint not by the State Bar Council but by the Disciplinary Committee. By placing reliance on the language of Section 36B(1), the said argument is reiterated.
7. Learned senior counsel for the respondents also refers to Part VII, Chapter I of the Bar Council of India Rules. Rule 17(1) of the same stipulates that the Secretary of every State Bar Council shall furnish particulars and send such statement as may be considered necessary by him for purposes of Section 36B of the Act and send all records and proceedings that stand transferred under the said Section. Sub-Rule (2) provides that the date of receipt of the complaint or the date

of initiation of the proceedings at the instance of the State Bar Council shall be the date on which the State Bar Council refers the case for disposal to its Disciplinary Committee under Section 35(1). Thus, it is beyond doubt, it is contended, that in the present case the period of one year has not commenced at all, since admittedly the complaint was received by the State Bar Council on November 3, 2022 but was referred to the Disciplinary Committee only in the month of August, 2023.

8. It is next argued by the respondents that in the absence of existence of the jurisdictional facts which constitute a complaint under Section 35, the complaint of the petitioner itself should be rejected as not maintainable. Learned senior counsel cites *Bhagwan s/o Maharudrappa Chougale Vs. Karnataka State Bar Council, Bengaluru and others*, reported at 2019 (2) AKR 397, where it was observed by a learned Single Judge of the Karnataka High Court that the Disciplinary Committee, on the basis of documents and affidavits, can decide the issue whether jurisdictional facts are existent and, accordingly, can also decide and determine the maintainability of a complaint.
9. In the present case, even as per the complaint, it is argued that no professional misconduct of the private respondent has been made out.
10. The respondents next cite *Arun Kumar and others Vs. Union of India and others*, reported at (2007) 1 SCC 732 where the Supreme Court reiterated that existence of jurisdictional fact is *sine qua non* for exercise of power. A jurisdictional fact was described as a fact which

must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a Court, a Tribunal or an Authority. If the jurisdictional fact does not exist, it was observed, the Court, Authority or Officer cannot act.

11. It is, thus, reiterated that the Disciplinary Committee has ample power to decide the issue of maintainability on an examination whether jurisdictional facts at all exist in the complaint.
12. Heard both sides.
13. The scheme of the Advocates Act and the Bar Council of India Rules, read in conjunction, are clear insofar as the stipulated time-limit is concerned. Section 36B (1) provides in an unambiguous manner that it is the Disciplinary Committee of a State Bar Council (as opposed to the State Bar Council itself) which shall dispose of the complaint received by it under Section 35 expeditiously and in each case the proceedings shall be concluded within the period of one year from the date of the receipt of the complaint or the date of initiation of the proceeding at the instance of the State Bar Council, as the case may be.
14. Here, it is nobody's case that the proceedings were initiated at the instance of the State Bar Council *suo motu*. Thus, the first part of sub-section (1) applies. It is the Disciplinary Committee which is to dispose of the complaint received by it within the period of one year from the date of such receipt of the complaint. Thus, the entire pivot of the sub-section rotates around the Disciplinary Committee. The

date of commencement of the stipulated one year is, as per the Section itself, the date of receipt of the same by the Disciplinary Authority. Thus, by necessary implication, the date of reference by the State Bar Council to the Disciplinary Committee under Section 35(1) which is, in the present case, in the month of August, 2023 is the relevant date from which the stipulated one year commences.

- 15.** Section 35(1) mandates upon the State Bar Council, where on receipt of a complaint it has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, to refer the case for disposal to its Disciplinary Committee.
- 16.** Hence, there cannot arise any question of reference of the matter to the Bar Council of India in terms of the last portion of Section 36B(1), as the period of one year has not yet elapsed after reference to the Disciplinary Committee.
- 17.** In *Achal Saxena (dead) (supra)*, cited by the petitioner, the Supreme Court only reiterated the provision of Section 36B. In the said case, it is the Disciplinary Committee which had received the complaint. The reference was made by the State Bar Council *vide* its resolution dated December 18, 2005. The Disciplinary Committee took cognizance of the complaint on January 15, 2006 and had passed its order on December 23, 2006. Thus, the consideration there was whether one year had elapsed after the resolution was referred to the Disciplinary Committee on December 18, 2005 and before it passed its order on December 23, 2006. Hence, the said decision does not aid the petitioner in their arguments.

18. Thus, the first and primary objection taken by the petitioner to the proceeding before the Disciplinary Committee of the West Bengal State Bar Council is turned down.
19. The second issue raised is whether the reference to the Disciplinary Committee also on the issue of maintainability of the complaint is valid.
20. In support of his argument, learned senior counsel for the petitioner has relied on the language of Section 35(1).
21. A comprehensive perusal of the scheme of the Advocates Act, 1961 and the Bar Council Rules, however, indicates unerringly that the State Bar Council only forms a preliminary opinion as to the alleged professional or other misconduct.
22. If it is palpable from the face of the complaint that it can be discarded at the outset, the question of reference to the Disciplinary Committee under Section 35(1) does not arise. The language used in Section 35(1) of the Act is “reason to believe” which is not an adjudication of any manner but a mere preliminary formation of opinion for the purpose of reference. Cases in which the State Bar Council decides not to refer the case at all are few and far between. If it is *ex facie* palpable that the complaint is either frivolous or patently not maintainable, of course, no reference may be made by the State Bar Council to the Disciplinary Committee at all.
23. However, the converse is not always true. There is a gray area between a complaint being palpably and *ex facie* not maintainable/*mala fide*/frivolous and there being lack of existence of

jurisdictional facts necessitating a disposal of the complaint on merits. Whereas the former is patent and palpable, furnishing ground for not even referring the matter to the Disciplinary Committee, in the latter case the reference needs to be made all the same for the Disciplinary Committee to examine the existence of jurisdictional facts.

- 24.** Thus, the mere formation of opinion by a State Bar Council that it has reason to believe that the accused advocate may be guilty of professional or other misconduct does not necessarily curtail the powers of the Disciplinary Committee to deal with the issue of maintainability of the complaint.
- 25.** If the formation of an opinion in the garb of “reason to believe” by the State Bar Council could replace an adjudication even *prima facie*, there would not any occasion to refer the matter to the Disciplinary Committee at all and the Bar Council itself could have decided the matter on merits.
- 26.** There may be umpteen cases where the State Bar Council may have reason to believe that the advocate may be guilty of misconduct but upon reference to the Disciplinary Committee, the Disciplinary Committee upon a scrutiny finds that the complaint is not maintainable, having not disclosed any clear-cut violation of any law or ethics amounting to professional or other misconduct by the advocate.
- 27.** Thus, the argument of the petitioner that the Disciplinary Committee does not have the power to decide whether the complaint is maintainable in fact and in law, is based on an erroneous glorification

of the preliminary formation of opinion by the State Bar Council itself to a higher footing than it stands.

- 28.** Hence, the decision of the learned Single Judge of Karnataka High Court in *Bhagwan (supra)* is rational and ought to be followed in this context.
- 29.** The proposition laid down in *Arun Kumar (supra)* regarding jurisdictional facts is also undisputable. At any point of time, it can be shown before an authority that the jurisdictional facts conferring jurisdiction on it are absent in the complaint.
- 30.** Thus, irrespective of the reference by the State Bar Council to it, the Disciplinary Committee can, indeed, independently decide upon a preliminary hearing of the parties as to whether the necessary facts to constitute and confer jurisdiction on it are available in the present case. The question of maintainability of the complaint on issues of law and fact can, accordingly, be decided by the Disciplinary Committee independently and irrespective of the initial opinion formed by the State Bar Council for the limited purpose of reference to it.
- 31.** Hence, the second issue is also decided against the petitioner inasmuch as the Disciplinary Committee has the authority to decide whether the complaint is maintainable before it in the facts and circumstances of the case.
- 32.** The State Bar Council, thus, was justified in referring the matter to the Disciplinary Committee for initial enquiry on the maintainability of the complaint and thereafter, if held maintainable, to decide the issues on merits.

33. Hence, I do not find any reason to interfere with the impugned decision of the State Bar Council or the pendency of the matter before its Disciplinary Committee. However, nothing in this order confers a mandate to the Disciplinary Committee to extend its exercise of adjudication beyond the period of one year from the date of reference of the complaint to it, which would be *de hors* Section 36B(1), comprising the mandate of the Statute.
34. Accordingly, in the light of the above observations, WPA No. 26174 of 2023 is dismissed on contest without any order as to costs.
35. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

( **Sabyasachi Bhattacharyya, J.** )