



Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2972 OF 2023**

Gunratan Sadavarte ...Petitioner  
*Versus*  
The Registrar/Secretary Disciplinary Committee ...Respondents  
& Ors

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**Mr Gunratan Sadavarte, *Petitioner in person.***  
**Mr Darius Khambata, Senior Advocate, *i/b Makrand Bakore, for***  
***Respondent No.1.***

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**CORAM G.S. Patel &  
Neela Gokhale, JJ.**  
**DATED: 6th April 2023**

**PC:-**

1. The Petitioner is an Advocate. He is aggrieved by a final judgment of the Bar Council of Maharashtra and Goa (“**BCMG**”), the 1st Respondent delivered on 26th March 2023. This suspends his licence to practice for a period of two years from the date of service of this order.

2. We have heard Mr Sadavarte appearing in person at some length. His grievances are many, but the principal ones for the purposes of our order today are these:

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- (a) *First*, that the BCMG failed to follow the statutorily prescribed procedure. He explains this to mean that although there may be a one-member scrutiny committee, the decision of whether or not to proceed with the disciplinary case (after scrutiny) has to be taken by the BCMG as defined under the Advocates Act 1961. Section 2(d) defines Bar Council to mean a council constituted under the Act. There are State Bar Councils constituted under the Act under Section 3 and it is the State Bar Council that, under Section 35, in Mr Sadavarte's submission, must take the decision. He points out that this would necessarily require his disciplinary case being an agenda item before the State Bar Council, and if a decision was taken to proceed, then a resolution to that effect followed by a referral of the case to a disciplinary committee for a hearing. This not having been done, he submits, the entire order is vitiated as being ultra vires the Act.
- (b) *Second*, Mr Sadavarte alleges bias, possibly in the strongest possible manner, against the chairman of the three-member committee that delivered the judgment. The allegation is of a personal bias, not a pecuniary bias, departmental bias, one based on a policy notion, or a preconceived notion. According to Mr Sadavarte, he and the gentleman in question have long been rivals in one arena or another, including BCMG elections. There are litigations between them right up to the Supreme Court and these are pending. It is

inconceivable, Mr Sadavarte submits, that someone who is his opponent in such bitterly contested litigations, and is a possible witness in those actions, should sit in judgment over Mr Sadavarte. There is, Mr Sadavarte submits, not just a mere apprehension of both malice and bias; there is not just the mere likelihood of bias actuated by malice; such a bias borne of malice is inevitable. The Chairperson ought not to have been a member of the disciplinary committee. The long history of this polarising discord between the two parties required him to recuse or to decline to act. In any conceptualization of administrative law, Mr Sadavarte submits, bias, once its *reasonable* likelihood is established is sufficient to vitiate the proceedings and any resultant order. Bias in such matters does not need actual proof but only requires the circumstances giving rise to a reasonable apprehension of bias be established. Those circumstances, he contends, are in fact matters of record.

- (c) *Third*, Mr Sadavarte submits, a routinely required adherence to fundamental rules of natural justice was not followed. Mr Sadavarte submits that in his defence he was entitled to take before the three-member committee even a point of jurisdiction and of a mandatory procedure not being followed. To that end, he repeatedly sought the disclosure of documents and sought to summon several witnesses. These were all in relation to his first submission, i.e., that the required

procedure of a decision being required by the BCMG was not followed. These documents were not furnished to him. He was not allowed to lead the evidence of these witnesses. On this aspect, there may be some controversy because the impugned order seems to note in paragraph 10 that Mr Sadavarte's Advocate declined to cross-examine and declined to lead further evidence. We only note that there is this reference in paragraph 10. We are returning no finding on this at this stage.

- (d) *Fourth*, Mr Sadavarte complains that the material relied on by the original complaint and by the three-member committee was not given to his lawyer. The original complaint did not have documents other than a photograph (or some photographs). With the Affidavit of Evidence that was subsequently filed, the complainant enclosed a pen drive with nine separate videos or video clips. On this aspect of the matter, there is some level of uncertainty. The amended Petition says that the pen drive copy that was supplied to Mr Sadavarte was blank or that the contents of it were inaccessible. The BCMG records indicate that a pen drive was furnished and Mr Sadavarte's Advocate acknowledged it. We only note this so that there is no controversy on this aspect of the matter going forward. From the time that the pen drive was furnished to Mr Sadavarte's Advocate and until the date of the impugned order, no complaint seems to have been made — at least there is none on record — saying

specifically and in so many words that the pen drive was damaged or that its contents were inaccessible.

3. Mr Sadavarte urges us to intervene on this presentation and to exercise our extraordinary discretionary writ remedy. It is evidently not possible to quash the order immediately and he submits that there should, therefore, be an immediate stay of the operation of that order.

4. But the submission seems to us to overlook the provisions of Section 37 of the Advocates Act 1961 and more importantly, certain provisions of Section 35 itself. These relate to Mr Khambata's preliminary objection on maintainability. The impugned order inter alia notes that there was an attempt to constantly seeks adjournments. We only note this because the statute itself says that if a disciplinary case is not decided within one year, it will stand transferred to the Bar Council of India ("BCI"). For this reason, the BCMG declined adjournment applications. We note from the impugned order that the BCMG had therefore before it, or so its judgment says, a deadline of 10th April 2023 by which it had to dispose of the complaint. That is one aspect of the matter, for we believe it would be very difficult to quash an order for declining an adjournment application in the face of a statutory deadline.

5. The other statutory provision is to be found in Section 37 which speaks of Appeals to the BCI. That section reads as follows:

"37. Appeal to the Bar Council of India. — (1) Any person aggrieved by an order of the disciplinary committee of a State Bar Council made under section 35 or the Advocate-

General of the State may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India.

(2) Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order including an order varying the punishment awarded by the disciplinary committee of the State Bar Council thereon as it deems fit:

Provided that no order of the disciplinary committee of the State Bar Council shall be varied by the disciplinary committee of the Bar Council of India so as to prejudicially affect the person aggrieved without giving him reasonable opportunity of being heard.”

6. Now sub-section (2) makes it very clear that the appellate remedy is a full-spectrum one. Any order that could be passed by a State Bar Council under Section 35 can be passed in appeal, including varying the punishment, if any, imposed by the State Bar Council. The proviso is salutary. It says that no order of a State Bar Council disciplinary committee is to be varied to the prejudice of the person aggrieved without giving him an opportunity of being heard.

7. To our mind, this makes it clear that before Mr Sadavarte can invoke the writ jurisdiction of the Court, he must avail of the alternative remedy that is available to him.

8. Mr Khambata for the BCMG raises this as a point of maintainability. We will consider that at an appropriate stage and do

not think it necessary to go into that at present in view of the order we propose to make today. We leave the question at large.

9. We do not, because we cannot, compel Mr Sadavarte to file an appeal. We believe we must, however, give him an appropriate opportunity to do so. He may also consider filing an Interim Application for interim relief or stay of the impugned order before the Appellate Authority, the BCI. He may also of course seek an urgent listing of that Interim Application for stay.

10. We do not propose to dispose of this Writ Petition. That would undoubtedly only cause further expense and delay if this Court has to be approached again for any reason. Further, if Mr Sadavarte's application for an urgent listing and hearing of his Interim Application for stay is itself refused or not taken up, then of course we must afford Mr Sadavarte an opportunity of renewing his application before the Court. That seems to us to be the only balanced way forward while on the one hand keeping in mind the availability of an appellate remedy while not completely shutting our doors to Mr Sadavarte at this early stage.

11. At present no further order is required. We grant liberty to Mr Sadavarte to move again but only in the circumstances set out above.

**(Neela Gokhale, J)**

**(G. S. Patel, J)**