

**BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNKAULAM**

Writ Petition No. of 2015

Petitioner

K.P.Dandapani, Senior Advocate, High Court of Kerala, residing at Thrupthi, T.D.Road North End, Ernakulam, Kochi – 682 035.

v.

Respondents

1. Bar Council of Kerala, represented by its Secretary, Bar Council Bhavan, High Court Campus, Ernakulam, Kochi – 682 031.
2. Sri. T.H.Abdul Azeez, Chairman, Bar Council of Kerala, Bar Council Bhavan, High Court Campus, Kochi-31.
3. The Secretary, Bar Council of Kerala, Bar Council Bhavan, High Court Campus, Kochi-31.
4. Sri. J.S. Ajith Kumar, Ananthapuri, Divine Nagar, Chittoor, Chernalloor Village, Ernakulam District.

**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA.**

1. Address for service of the Writ Petitioner is that of his counsel Smt. M.U. Vijayalakshmi, M/s. Babu & Babu, Advocates, Makam, St. Alberts H.S. Lane, Cochin – 682 035.
2. The address for service of the respondents is as shown above.

STATEMENT OF FACTS

1. The Writ Petitioner is deeply aggrieved by the high handed and illegal course of action adopted by Respondents 2 & 3 at the instance of the 4th respondent. Petitioner challenges Exhibits P2 & P3.
2. Exhibit P2 is a document styled as a notice dated 21.01.2015 issued by the 3rd respondent at the instance of the 2nd respondent. Exhibit P2 was accompanied by Exhibit P3 which is a complaint alleged to have been preferred by the 4th respondent before the 1st respondent.

Interestingly, the 4th respondent's complaint is titled as a complaint regarding professional misconduct as well as activities against professional ethics and morality. The Writ Petitioner herein is arrayed as the 2nd opposite party in the complaint.

3. Writ Petitioner is a designated senior advocate practicing before this Honourable Court for the past 47 years without giving room for any allegations or complaints. Writ Petitioner enrolled as a lawyer on 17.05.1968 on the rolls of Kerala State Bar Council. In his unblemished career as lawyer, the Writ Petitioner had the fortune to adorn various responsible posts which includes Judgeship of this Honourable Court, President of the Bar Association and presently the Advocate General of the State. He is also the ex-officio member of the Bar Council of Kerala in his capacity as the Advocate General. Petitioner's wife Smt.Sumathi Dandapani is a Senior Advocate of this Honourable Court and the son Sri.Millu Dandapani is also a lawyer of this Honourable Court.
4. Be that as it may, to the utter shock, surprise and dismay of the Petitioner, on 28.01.2015, the 2nd respondent appeared on a T.V. channel and gave an interview to the effect that on receipt of a complaint submitted by the 4th respondent, Bar Council had issued notice to the petitioner. Apart from the Channel interview, petitioner also came to know about initiation of some process through press reports in which it is reported that the 2nd respondent has made certain comments regarding morality and ethics. For the purpose of reference, a true copy of news item reported in Desabhimani daily dated 29.01.2015 is produced and marked as **Exhibit P1**.
5. While so, to petitioner's disgrace, he received a document titled as a notice on 29.01.2015 which is dated 21.01.2015 issued by the 3rd respondent. For the purpose of reference, a true copy of the notice bearing No.KBC/CP-9-15/ /15 dated 21.01.2015 issued by the 3rd respondent is produced herewith and marked as **Exhibit P2**.

6. It is worthwhile to extract the contents of Exhibit P2 for the purpose of reference:

“The Council has received a complaint alleging professional/other misconduct against you. A copy of the complaint is enclosed. You are requested to forward your remarks thereon with additional 30 (thirty) copies within two weeks from the date of receipt of this notice, for consideration by the Council.”

Along with Exhibit P2 petition also received another document referred as complaint filed by the 4th respondent herein in which the Writ Petitioner is arrayed as the 2nd opposite party. For the purpose of reference, a true copy of the complaint dated nil, referred to in Exhibit P2 which was received along with Exhibit P2 is produced herewith and marked as **Exhibit P3**.

7. At the outset itself it is submitted that Exhibit P3 is full of surmises and conjunctures. Exhibit P3 can at the most be considered as the outcome of an envious and disturbed mind which may be turbulent due to reasons best known to its author. None of the facts alleged in Exhibit P3 is capable of constituting any misconduct much less a professional misconduct which has to be dealt with under the Advocates Act, 1961 and rules framed there under. The entire averments in Exhibit P3 do not make out a case of misconduct.
8. It is also pertinent to point out that the 3rd respondent has no authority to issue Exhibit P2 notice. A notice in the form of Exhibit P2 is not at all contemplated under the Act or the Rules. On enquiry, it is understood that the 3rd respondent issued Exhibit P2 at the dictates of the 2nd respondent as a process of ***calling for remarks***.
9. The process of initiation of the complaint under the Advocates Act 1961 is dealt with under Chapter V Section 35, 36, 36B etc. The procedure for dealing with disciplinary proceedings is enumerated under Part VII, Chapter I of the Bar Council of India Rules. For the purpose of reference, it is worthwhile to extract rule 1,2 & 3 of Chapter I of Part VII of the Bar Council of India Rules:

1. *(1) A complaint against an advocate shall be in the form of a petition duly signed and verified as required under the Code of Civil Procedure. The complaint could be filed in English or in Hindi or in regional language where the language has been declared to be a State language and in case the complaint is in Hindi or in any other regional language, the State Bar Council shall translate the complaint in English whenever a disciplinary matter is sent to the Bar Council of India under the Advocates Act.*

Every complaint shall be accompanied by the fees as prescribed in the rules framed under Section 49(h) of the Act.

(2) The Secretary of the Bar Council may require the complainant to pay the prescribed fees if not paid, to remove any defects and call for such particulars or copies of the complaint or other documents as may be considered necessary.

(3) On a complaint being found to be in order, it shall be registered and placed before the Bar Council for such order as it may deem fit to pass.

(4) No matter taken up by a State Bar Council suo motu or arising on a complaint made under Section 35 of the Act shall be dropped solely by reason of its having been withdrawn, settled or otherwise compromised, or that the complainant does not want to proceed with the enquiry.

2. *Before referring a complaint under Section 35(1) of the Act to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complaint to furnish within a time to be fixed by it, further and better particulars and may also call for the comments from the advocates complained against.*

3. *(1) After a complaint has been referred to a Disciplinary Committee by the Bar Council, the Registrar shall expeditiously send a notice to the advocate concerned requiring him to show cause within a specified date on the complaint made against him and to submit the statement of defence, documents and affidavits in support of such defence, and further informing him that in case of his non-*

appearance on the date of hearing fixed, the matter shall be heard and determined in his absence.

Explanation:- Appearance includes, unless otherwise directed, appearance by an advocate or through duly authorized representative.

10. The process explained under the above provisions makes it clear that other than the Bar Council, the Secretary or the Chairman has no authority or jurisdiction conferred by the Act or the Rules to issue any notice or call for any explanation from either the complainant or the Advocate against whom complaint is filed. As per Rule 1(2) the Secretary's role is limited to ascertaining whether the complaint is in order ; requiring the complainant to pay prescribed fees if not paid, to remove any defects and call for such particulars or copies as may be considered necessary. As per Rule 1(3) , on a complaint being found to be in order, it shall be registered and placed before the **Bar Council** for such order as it may deem fit to pass. As per Rule 2, before referring a complaint to one of its disciplinary committees, the Bar Council may require further and better particulars of the complainant and may also call for the comments from the advocates' complaint against. In nut shell, the Secretary or even the Chairman does not enjoy any individual power to issue a notice or to call of remarks or even to dictate calling for remarks so as to place the same before Bar Council. Every process contemplated under the procedure established by the Rules specifically points out that any decision to issue any order at a pre-reference stage or to call for comments before reference should be a conscious decision to be taken by the Bar Council and nobody else. Therefore, Exhibit P2 notice issued by the 3rd respondent Secretary at the dictates of the 2nd respondent is without jurisdiction, illegal and vitiated by malafides. Respondents 2 & 3 had no authority to issue Exhibit P2 notice.
11. Secondly, none of the allegations in Exhibit P3 complaint make out misconduct much less professional misconduct so as to exercise the jurisdiction vested in the Bar Council or its bodies. The respondents 2 & 3 ought to have exercised reasonable care and caution that could

have been exercised by a prudent mind before issuing any notice in the form of Exhibit P2.

12. The allegations enumerated in Exhibit P3 is to the effect that, while petitioner is functioning as Advocate General, Petitioner's wife and son who are practicing lawyers before this Honourable Court are filing cases against Government and its instrumentalities and such filing of cases amounts to professional misconduct, and against professional ethics and constitutional morality. It is also alleged that using his influence, Petitioner facilitated Standing Counselship to his son and thereby file cases against Government as well as its instrumentalities. Thereafter, the 4th respondent made some contemptuous remarks regarding filing of Review Petition No.19/2015 by his erstwhile office and his son appeared against the 4th respondent. In short, the allegation pointed out by the 4th respondent is that while Petitioner is functioning as Advocate General his wife and son should not practice or file case against Government. Thus, the 4th Respondent has no other allegations regarding any misconduct or professional misconduct committed by the Petitioner. For the purpose of reference a true copy of the judgment dated 12.01.2015 in R.P. 19/2015 is produced and marked as ***Exhibit P4***. A perusal of Exhibit P4 judgment itself shows it is a judicial order and none of the allegations raised in Exhibit P3 in connection with filing of R.P. No. 19/2015 raised by the 4th respondent herein are true.
13. The attitude of 2nd respondent in dictating to issue Exhibit P2 notice against the petitioner on Exhibit P3 complaint which was whimsical is unreasonable and opposed to the procedure established by law. In fact, issuance of Exhibit P2 notice without complying the procedure established by law that too in a proceeding of a quasi criminal nature speaks volume about the casual approach taken by the 2nd respondent.
14. The 2nd respondent ought not to have dictated the 3rd respondent to issue Exhibit P2 notice especially in the event that Exhibit P3 does

not disclose any misconduct. The action of the 2nd respondent is vitiated by malafides and liable to be aborted at the inception itself. Being the Chairman of a statutorily elected body in which the Petitioner is also an ex-officio member, the 2nd respondent should have exercised reasonable care and caution before taking any steps on Exhibit P3. At any rate, there is no room for any prima facie satisfaction for the 2nd respondent or any other body or authority except the Bar Council with regard to a complaint filed before it.

15. Aggrieved by Exhibits P2 & P3 and having no other efficacious or alternative remedy, Petitioner prefers this Memorandum of Writ Petition under Article 226 of the Constitution of India on the following among other:

G R O U N D S

- A) Exhibit P2 has been issued without jurisdiction and in violation of the procedure established by law.
- B) Exhibit P2 is illegal, arbitrary and bereft of jurisdiction. Respondents 2 as well as 3 lacks jurisdiction either to issue Exhibit P2 or to consider and appreciate Exhibit P3.
- C) State Bar Council is defined under Section 2(1)(m) of the Advocate's Act 1961. It is an exhaustive definition defining State Bar Council means a Bar Council constituted under Section 3 of the Act. As per Section 3 a Bar Council is constituted this is a corporate body having perpetual succession and common seal. In other words the entity itself if given a legal personality and the individual members cannot represent the said juristic body. For that reason alone whenever the word Bar Council is used it denote that jural person and the same cannot be substituted by the members constituting it much less the Chairman.
- D) Section 6 narrates the functions of State Bar Councils. Section 6(c) is very important which is extracted as under:

Section 6(c) “ to entertain and determine cases of misconduct on its roll”

As per the above provision the very entertainment of the complaint before the determination of a Court itself is provided in the primary legislation itself. The word entertain is a word of important significance. Entertain means the act of receipt of complaint or to take steps to take cognizance of it or do all primary verification preceding the adjudication on the complaint. Going by the primary legislation itself the power to entertain the complaint itself is vested with the council itself. The said power and authority is conferred on the juristic body namely the council and non else either individually or otherwise.

- E. Going by the primary legislation itself for the act entertaining a complaint no delegation is permitted to any person either to act on its behalf either in the capacity as a member or as the Chairman of the Council. Therefore in the absence of such a delegation in the primary legislation the very entertainment of a complaint and its further action can only be by the council. It may be noted that a mere reception of a complaint by itself will not amount to entertainment. The question of entertainment comes only when the matter looks into by the council when the complaint is placed before the council and not until then.
- F. On going through the primary legislation vide Section 6(c) too phraseology are used namely entertainment and determination by the Council. The scheme of the Act as well as the Section would indicate that for the determination of the complaint if there is prima facie case delegation is given to the disciplinary committee. Whereas no such delegation is given to any other subordinate body officials, members or the Chairman as respect the entertainment of the complaint is concerned. The irresistible conclusion is that for the entertainment of the complaint the responsible body itself is statutorily invested with the task since the matter regarding misconduct is a quasi criminal matter in nature and the legislature thought of putting such an

important matter in the plenary body itself instead of the same being interested to the subordinate committees or other members including the chairman.

- G. As per Section 15 of the Advocate's Act power to make rule had been conferred on the Bar Council. On a perusal of the above statutory provision it can be seen that specific pigeon holed matters are enumerated vide Sub Clause (a) to (n). In none of the above rule making enabling entries, there is reference about any delegation of powers either to the Chairman or to the members or even to any committees. It is to be noted that the parent Act was very cautious even in specifically providing provision in cases where any delegation to any other committee other than the council is occasioned. For example Section 9 of the Act makes specific reference of the disciplinary committee. Therefore, neither the Chairman nor the members for that reason has any authority either under the statute or under the rule to make any step or action in the matter of entertainment of a complaint. That being so, the present Act of the Chairman in entertaining the complaint and to take further steps to call for the remarks which is not only unwarranted beyond the powers of as per the provisions of the Act.
- H. The Bar Council of India promulgated rules under the Advocate's Act. The disciplinary procedure to be followed are enumerated in part XII Chapter I of the Rules. As per Rule I(3) it is the mandatory requirement that on a complaint being found to be in order it shall be registered and placed before the Bar Council for such order as it may deem fit to pass. The Act of placing is preceded by the word 'shall' makes the provision mandatory and there is no other escape than to place the complaint before the council which alone is competent to pass order as can be seen from the phraseology 'for such order as it may deem fit'. Therefore, no other authority can touch the complaint and to call for the remarks or any other action in relation to the complaint at all. It is transparently evident that the word 'placed before the Bar Council' is also a mandatory requirement which have to be read together with the for the purpose of ascertaining the

intention of the rule maker that it is the council and it alone has the authority to make any order in relation to the complaint. That being so the present order and endorsement by the Chairman is absolutely illegal and ultra-vires.

- I. Further going by Rule 2 of the Bar Council of India Rules it is further stipulate that before referring a complaint under Section 35(1) of the Act to the disciplinary committee, it may require the complainant as well as the delinquent advocate to furnish comments. The rules also referred to the Bar Council to take such a course and none else has the authority to call for comments or remarks in the capacity as the member or as a Chairman. It is submitted that the Chairman of the Council is no having no individual power to take any steps in the matter of entertainment of the compliant or to make any order in relation to the matter of discipline of advocates. Therefore, the present endorsement/ order followed by the notice are per-se illegal without jurisdiction and ultra-vires.

- J. The power take to cognizance of the complaint is specifically spelt in Section 35 of the Act. As per the said provision 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 the disciplinary committee. It is pertinent to note that the authority indicated that the State Council and the parameter for such reference is its reason to believe the commission of a misconduct. In other words it is note the subjective satisfaction of the council but it should be objective consideration in the sense that there should be material before the council to take recourse to the reference. The key word 'reason to believe' is not defined in the Advocate's Act. It is an accepted principle that the disciplinary proceedings are quasi-criminal in nature and the standard applicable is that of in criminal offences. Though the word reason to believe is not defined in the Advocate's Act but the same was defined in Section 26 of the Indian Penal Code. The definition as per the penal code is as follows:

Section 26: '**reason to believe**':- A person is said to have reason to believe a thing if he has sufficient course to believe that thing but not otherwise.

Therefore, there should be sufficient course for initiation and the sufficient course reflects sufficiency in material for the purpose of an ordinary prudent man to come to a conclusion that there is ground of sufficient nature to proceed. Therefore, in the present case the issuance of notice itself was without the councils decision coupled with the fact there was no material at all even for the council to take recourse to Section 35 on bare perusal of the complaint. That being so the present issuance notice itself is one without jurisdiction and authority and therefore the same is liable to be quashed.

- K. There is absolutely no merit in the complaint. If the complaint taken as a whole, even if the allegations are admitted, will not prima facie spelt out any act of misconduct. The petitioner is now occupying a Constitutional Post. The petitioner's son is not practicing as a junior to him. In the absence of any allegation relating to the professional discharge of duty by the petitioner in his capacity as a lawyer, no complaint will lie against him. The compliant never spelt out any allegation of misconduct as a lawyer, against the petitioner, and therefore, the same is liable to be thrown overboard at the very threshold.
- L. The allegation in the complaint are the result of spite and ill will as well as the same is actuated by malafides. So also allegations are so general and vague without any material or evidence and as such the same doesn't stand even for a preliminary scrutiny envisaged under Rule 1(3) and 2 of the Bar Council of India Rule.
- M. The complainant vaguely alleges that the petitioner's wife and son are filing against the Government on the basis of advice consent and connivance of the petitioner. But the said allegation is breft of any substance at all in as much as no specific instances or other particulars or details had been furnished wherein to substantiate the

said allegation. The complainant has no case that the petitioner appeared in any cases where his son or wife appeared or that any particular case in which any corrupt or inducement had been exerted. In the absence of such specific details and particulars the complaint itself is devoid of any substance.

- N. The allegation of the complainant that the petitioner due to his personal influence helped his son in getting Standing Councils for public bodies. The allegation even if taken for granted will not amount to misconduct nor it violate any provisions of the Code of ethics. The petitioner has no case that the official position of the petitioner had been misused nor has a case that he had corruptly induced persons in securing such posts. It is pertinent to note that appointments as Standing Council is the prerogative wisdom of the concerned institutions having autonomy to take such policy decision. That exercise of authority by the institution under their free will in no way touches the professional duties of the petitioner either as an advocate nor as the Advocate General. The allegation that loss had been sustained in making such appointment to the Government remains as an allegation unsubstantiated without any materials, credential or details.
- O. The complainant take exception in petitioners wife and son filing Writ Petition against the Government. It is to be noted that Dandapani Associates is not a firm nor a company. It only denote the name of the office simpliciter. The petitioner, his wife and son are having practice under individual capacities. They are also assessed separately under the Income Tax Act. The wife and son of the petitioner are independent lawyer's having the right and prerogative to practice as per the provisions of the Advocate's Act. Therefore, filing of cases by individual lawyer cannot be attributed to be a misconduct simply because of the fact that the near/ dear relative of those lawyers happen to be occupying a constitutional position. By no stretch of imagination such filing of cases can be attributed as a misconduct. The complainant has no case that the petitioner in the capacity as an Advocate General appeared in any cases for the

Government in which his wife or son had appeared for any of the parties. Further no details of the case or credentials are furnished to substantiate the allegations. It is pertinent to note that the complainant exceed all his limits in his complaint by commending that judgments were procured in that fashion will itself amounts to contempt of court and the same tend to cast aspersions on the judicial process of passing orders and judgments by this Hon'ble Court. That being the admitted factual materials available from the complaint, there is even a prima facie material for even entertaining the present complaint.

- P. The allegation relating to WPC 25119/2014 were enquired into by the petitioner since allegations were raised against two named Law Officers. The enquiry revealed that the allegation of the complainant is baseless and absolutely untenable. The judgment in WPC 25119/2014 was one passed by the learned Single Judge in favour of the complainant as against the party respondents in the Writ Petition. The aggrieved party respondent filed R.P. No. 19/2015 seeking to review the original judgment. The right of review is expressly provided under Section 114 r/w order 47 Rule I of the Code of Civil Procedure against any judgment and decree for the grounds set forth in the provision. The filing of Review Petition is a routine legal procedure if the original judgment suffers from an error apparent on the face of the record. The aggrieved party filed a review by engaging a lawyer of his choice. The learned Judge after hearing the parties reviewed the judgment in open Court at the site and hearing of the parties. It is a judicial decision and no aspersion can be casted against such a judicial process. The complainant alleges misconduct simply due to his spite and ill will that the review petition was allowed and his cause defeated legally. The complainant being a party who is personally interested has an axe to grind against opposite lawyer who unfortunately happened to be the son of the petitioner. The present allegation based on the Review Petition is based on personal bias, animosity, spite and ill will of the complainant towards the son of the petitioner and thereby ultimately turned against the petitioner. The allegation against the two

Government Pleaders in the complaint was proved to be baseless and further there is no allegation against the Government Pleader who appeared in the Review Petition as can be seen from the cause title will demonstrably prove that the allegation against the petitioner is calculated malign the goodwill and reputation of the petitioner that he earned from the 47 years of his carrier in the profession. Therefore, complaint itself is maliciously instituted.

- Q. There is absolutely no substance in the complaint attracting misconduct even going by the very allegation made in the complaint itself. No materials or particulars have produced, stated or even referred in support of his allegation in any case filed by the petitioner's son and wife against the State are on the basis of advice or direction of the petitioner. So also there in absolutely no materials or particulars stated averred or produced to show that the petitioner has any material gain directly or indirectly obtained by the filing of the cases by the son and wife. The petitioner was appointed as the Advocate General by the Government and the state is confident in the petitioner for his engagement and also is satisfied as to his official discharge of duties. Moreover, the petitioner never appeared in any of the cases which were filed by his son or wife before the Court in his capacity as Advocate General or otherwise. Therefore, in the absence of any concrete materials or credentials, the complaint itself is not maintainable.
- R. The complainant vaguely alleges that loss had been sustained to the State on account of the petitioner. There is absolutely no material whatsoever even to sustain such an allegation for a moment. On the other hand the petitioner who by his humble service to the State have saved crores of rupees. Before the petitioner taking charge as the Advocate General, it was the practice of deploying out station lawyers from Delhi and other places by paying huge fee for matters on behalf of the State. In that respect crores rupees were expended by the State. After the petitioner becoming the Advocate General the above practice of deployment of out station counsels were abruptly stopped and the petitioner himself was appearing in the important

matters with stake for the State and thereby the public exchequer was benefited.

- S. The petitioner is put to manifest injustice and prejudice on account of the ill-motivated action of the Chairman and the Secretary of the Bar Council. The said sheer abuse of power has to be interdicted at the earliest stage, if such an action is deliberate, without jurisdiction or tainted with malafides. The malafides in initiating the proceedings is writ large on the face of the notice. It will be difficult for the petitioner to expect any fair decision even if he answers the notice. The entire exercise will be reduced to a mockery or a farce. In such circumstances to prevent a manifest injustice occurring and to further prevent a bias exercise of power by the statutory authority, which patently lacks jurisdiction to do so, it is submitted that the extra ordinary power and jurisdiction of this Hon'ble Court conferred on it under Article 226 of the Constitution of India may be exercised. The petitioner is therefore invoking that power as he has no other remedy provided under law.

For these and other reasons to be urgent at the time of hearing, it is most respectfully prayed that:

PRAYERS

- (i) To issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading to Exhibit P2 & Exhibit P3 and quash the same as illegal and without jurisdiction.
- (ii) To issue a writ in the nature of a declaration declaring that Ext.P2 is a nullity in the eye of law and the 2nd Respondent has no authority under the provisions of the Advocates Act 1961 and the Bar Council of India Rules to endorse or make any orders on Ext.P3 to call for remarks from the Petitioner.
- (iii) To issue a writ in the nature of a declaration declaring that the allegations raised in Ext.P3 are not capable of constituting any

professional misconduct much less any misconduct and therefore cannot be considered under the provisions of the Advocates Act 1961 and the Bar Council of India Rules.

- (iv) To issue a writ of prohibition or any other appropriate writ, order or direction in the nature restraining Respondents 1 to 3 from taking any further action pursuant to Ext.P3 or otherwise in view of the fact that the allegations in Ext.P3 are not capable of disclosing any misconduct,
- (v) To grant such other and further reliefs as may be prayed for during the pendency of the Writ Petition.

INTERIM RELIEF

For the reasons stated in the Memorandum of Writ Petition and accompanying affidavit, it is respectfully prayed that this Honourable Court may be pleased to grant an interim stay of the operation of Exhibits P2 and P3 and all further proceedings pursuant thereto, in the interest of justice pending disposal of Writ Petition.

Dated this the 02nd day of February, 2015.

Petitioner

Petitioner received Ext.P3 complaint along with Ext.P2 notice on 29.01.2015. In Ext.P2, it is stated that Petitioner shall give his remarks for the purpose of placing the same before the Bar Council.

Primarily, the 3rd respondent has no authority to issue Exhibit P2 notice. A notice in the form of Exhibit P2 is not at all contemplated under the Act or the Rules. On enquiry, it is understood that the 3rd respondent issued Exhibit P2 at the dictates of the 2nd respondent as a process of **calling for remarks**. Under the Advocates Act or Bar Council of India Rules, the Secretary or even the Chairman does not enjoy any individual power to issue a notice or to call for remarks or even to dictate calling for remarks so as to place the same before the Bar Council. Every process contemplated under the procedure established by the Rules specifically points out that any decision to issue any order at a pre-reference stage or to call for comments before reference should be a conscious decision to be taken by the Bar Council and nobody else. Therefore, Exhibit P2 notice issued by the 3rd respondent Secretary at the dictates of the 2nd respondent is without jurisdiction, illegal and vitiated by malafides. Respondents 2 & 3 had no authority to issue Exhibit P2 notice.

Secondly, Exhibit P3 is full of surmises and conjunctures. Exhibit P3 can at the most be considered as the outcome of an envious and disturbed mind which may be turbulent due to reasons best known to its author. None of the facts alleged in Exhibit P3 is capable of constituting any misconduct much less a professional misconduct which has to be dealt with under the Advocates Act, 1961 and Bar Council of India Rules framed there under. The entire averments in Exhibit P3 do not make out a case of misconduct. Hence this Writ Petition.

Dated this the 2nd day of February, 2015

Counsel for the Petitioner

