

217

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-13235-2020 (O&M)
DATE OF DECISION: 23.11.2020**

Vijay Bharat VermaPetitioner

versus

Bar Council of Punjab and HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Suhail Dutt, Senior Advocate with
Mr. Bhaskar Subramanian and
Mr. Ankit Midha, Advocates for the petitioner and
Mr. Vijay Bharat Verma, petitioner in person.

Mr. C.M. Munjal, Advocate with
Mr. Gaurav Sharma, Advocate for the respondent.

..

ALKA SARIN, J.

Heard through video conferencing.

The present civil writ petition has been filed under Article 226 of the Constitution of India seeking issuance of an appropriate writ or direction for quashing and setting aside the order dated 14.08.2020 (Annexure P-1) passed by the respondent-Bar Council of Punjab and Haryana in Complaint No.115 of 2020, whereby the suo-moto complaint against the petitioner has been sent to the Disciplinary Committee and the license to practice of the petitioner has been suspended in the interim, and also for issuance of a writ for quashing of notice dated 21.08.2020 (Annexure P-3) passed by the Bar Council of Punjab and Haryana, respondent herein, in Complaint No.115 of 2020 whereby the Disciplinary Committee has initiated the enquiry against the petitioner and called for his response.

The present case inter-alia raises an important question for determination by this Court as to “Whether the Bar Council can, on a complaint, suo-moto or filed by a complainant, pass an order suspending the licence to practice of an Advocate while referring the complaint to a Disciplinary Committee”.

The facts relevant to the present case are that the petitioner is an advocate practising in the District Courts, Ludhiana. He is stated to be 70 years of age and been the President and Vice President of the District Bar Association, Ludhiana. The State Bar Council (respondent) took *suo moto* cognizance of certain remarks allegedly made by the petitioner on Facebook. The Deputy Secretary of the State Bar Council (respondent), on going through the comments made by the petitioner on Facebook, submitted a note before the Chairman of the State Bar Council (respondent) on 04.08.2020. On 04.08.2020 itself the Chairman of the State Bar Council (respondent) passed the order “*To issue show cause notice. To file reply in one week*”. The show cause notice is stated to have been served to the petitioner via WhatsApp and was sent from the official mobile number of the Deputy Secretary to the mobile number of the petitioner. The notice was also sent to the petitioner via Speed-post.

The petitioner is stated to have failed to file a reply within one week and the matter was put up before the General House of the State Bar Council (respondent) on 14.08.2020. 18 members out of 25 elected members were present when the agenda item (Annexure R-1) was put up for consideration and the impugned resolution dated 14.08.2020 (Annexure P-1) was unanimously passed. In the resolution, it was noted that “.....*All the members present considers, after evaluating the totality*

of factors, the attack on the elected members of the Bar Council is offensive, intimidatory or malicious beyond condonable limits, therefore, a strict action is to be taken against Mr. Verma. The Bar Council is rather of this view that the welfare of the advocates at large is the prime duty and this can be achieved only when the elected members can administer lawfully, judiciously without fear or favour and without being hampered and thwarted and this cannot be effected unless the respect for it is fostered and maintained. To punish an advocate for misconduct must be regarded as extreme measure but to preserve the proceedings and dignity of the Bar Council from being deflected or interfered with and to keep the streams of justice it becomes the duty of the Bar Council to punish such an advocate in order to preserve its dignity.....”.

Vide the impugned resolution dated 14.08.2020 (Annexure P-1) the case was referred to a Disciplinary Committee for taking appropriate action and, in the meantime, the license of the petitioner to practice as an Advocate was suspended by debarring him not to appear in any court or authority of law throughout India. A Press Note dated 16.08.2020/17.08.2020 (Annexure P-2) was released by the State Bar Council (respondent) stating therein it's decision to suspend the licences of some advocates, including the petitioner. On 18.08.2020 copies of the impugned resolution dated 14.08.2020 (Annexure P-1) were sent by the Deputy Secretary of the State Bar Council (respondent) to it's Secretary, the petitioner and to the District and Sessions Judge, Ludhiana. Thereafter, a notice dated 21.08.2020 (Annexure P-3) was issued by the Disciplinary Committee of the State Bar Council (respondent) to the petitioner under Section 35 of the Advocates Act, 1961 (hereinafter

referred to as the '1961 Act') for appearing in the complaint against him on 04.09.2020 at 03.00 p.m.

The petitioner has challenged the impugned resolution/order dated 14.08.2020 (Annexure P-1) and the notice dated 21.08.2020 (Annexure P-3).

In the writ petition and during arguments it was contended on behalf of the petitioner that the proceedings initiated against the petitioner are vitiated on various grounds being wholly without jurisdiction and in gross violation of all principles of natural justice and the petitioner, being left with no other efficacious remedy, had no alternative but to approach this Court. Learned counsel for the petitioner would contend that the role of the State Bar Council (respondent) as envisaged under the 1961 Act is to only refer the matter to the disciplinary committee and the State Bar Council (respondent) has no power to pass an interim order and that this power vests only with the disciplinary committee and that too after affording an opportunity of hearing to the Advocate concerned. In support of this submission, learned counsel for the petitioner has relied upon the judgment passed in 'Girija Prasanna Panda vs. Orissa State Bar Council' [2001(2) Ori. Law Rev. 216].

Learned Senior Counsel appearing for the petitioner has also contended that the posting of comments on Facebook would not come within the purview of professional misconduct as envisaged in the 1961 Act. According to him, the 1961 Act does not define misconduct. However, the same has been defined by the Supreme Court and in support of his arguments, learned counsel for the petitioner has relied

upon the judgment of Hon'ble Supreme Court passed in 'Bar Council of Maharashtra vs. M.V. Dabholkar & Ors.' [1975(2) SCC 702]. Much reliance has been laid by learned counsel for the petitioner on para nos.24 and 26 of the said judgment.

The next submission made on behalf of the petitioner is that the agenda for the meeting held by the State Bar Council (respondent) on 14.08.2020 was kept under wraps and not circulated with the notices. Learned counsel for the petitioner has referred to the Chapter-II Part-II of the Bar Council of India Rules (hereinafter referred to as the 'BCI Rules'] to contend that fifteen days' notice is mandatory for a meeting and the notice mandatorily has to contain the agenda.

It has further been contended that the Members of the House of the State Bar Council (respondent) have pre-judged the issue inasmuch as the impugned resolution/order dated 14.08.2020 (Annexure P-1) virtually closes the issue holding the petitioner guilty of misconduct. It is further the contention that the disciplinary committee is biased as two of its members are the Members of the House. Learned counsel for the petitioner would further contend that nobody can be a Judge in his own cause and, in the present case, the State Bar Council (respondent) is the Judge, Jury and Executioner. Learned counsel relied upon the wording used in the impugned resolution/order (Annexure P-1) to emphasise that the case against him already stood decided. Counsel also urged that the notice Annexure P-6 issued to the petitioner was defective and was in fact not even properly served upon the petitioner. It was further argued that even otherwise the notice Annexure P-6 was silent regarding taking of any punitive action by the State Bar Council (respondent) against the

petitioner. This illegality vitiated the entire process undertaken by the State Bar Council (respondent) after issuance of the said notice Annexure P-6.

On 01.09.2020, notice of motion was issued and it was ordered that the proceedings before the disciplinary committee be adjourned to a date beyond the date fixed before this Court.

A short reply dated 24.09.2020 has been filed by the State Bar Council (respondent) by way of affidavit of its Deputy Secretary.

Mr. C.M. Munjal, learned counsel appearing on behalf of the State Bar Council (respondent), has contended that the present civil writ petition is not maintainable in view of the alternate remedy available to the petitioner that being filing of a revision under Section 48-A of the 1961 Act. Learned counsel for the State Bar Council (respondent) has further contended that since the matter has been disposed of by the Bar Council, hence, a revision under Section 48-A of the 1961 Act would be maintainable.

The learned counsel appearing for the State Bar Council (respondent) submitted that the petitioner's act of posting derogatory comments on social media about the judiciary and lawyers amounted to gross misconduct and in such a situation the State Bar Council (respondent) was completely justified in passing the impugned resolution/order (Annexure P-1) suspending the licence of the petitioner during the pendency of the disciplinary proceedings. Mr. Munjal has further contended that a State Bar Council has the power to pass an interim order in a pending enquiry and in support of his arguments he has relied upon a decision by the Madras High Court in 'K. Sathyabal vs.

Bar Council of Tamil Nadu and Puducherry & Ors.' [2016(3) MLJ 714].

Mr. Munjal has further submitted that the notice dated 04.08.2020 (Annexure P-6) was duly received on the phone of the petitioner on Whatsapp and the petitioner had also read the same. According to him, there were two blue ticks against this message which prove that the notice was read by the petitioner and he cannot now deny having received the same. It was further stated that the petitioner deliberately did not send any comments to the show cause notice and, therefore, after the expiry of the time granted, the State Bar Council (respondent) proceeded further and the matter was taken up in its meeting on 14.08.2020.

Learned counsel for the State Bar Council (respondent) has further contended that the provision regarding circulation of the agenda would apply only to an extra-ordinary meeting. The notice of the present meeting was given to the members and none of the members have raised any objection. It has further been contended by learned counsel for the State Bar Council (respondent) that no reply to the show cause notice was received and hence, the House proceeded to deal with the matter and referred it to the disciplinary committee.

In rejoinder, learned counsel for the petitioner has contended that a perusal of the show cause notice (Annexure P-6) would reveal that no address has been mentioned in it and it only gives the address as 'District Courts, Ludhiana' and that the petitioner never received any such show cause notice. He has further contended that the petitioner is a member of about 400 WhatsApp groups of Punjab and Haryana and there

are 1000 messages received daily which are selected as 'Read All' to avoid blocking of network due to heavy storage of messages. He has further contended that since the matter has not been concluded or finally disposed of by the State Bar Council (respondent), there was no remedy of revision available to the petitioner. In support of his arguments, learned counsel for the petitioner has relied upon the following judgments:

1. *'Bar Council of Maharashtra vs. M.V. Dabholkar & Ors.'* [1975(2) SCC 702]
2. *'Pinaki Bhailal Amin vs. Haresh Manibhai Patel & Ors.'* [2001(9) SCC 730]
3. *'An Advocate vs. Bar Council of India & Ors.'* [1989 Supp.(2) SCC 25]
4. *'Girija Prasanna Panda vs. Orissa State Bar Council & Ors.'* [2001(2) OLR 216]
5. *'Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai'* [1999(4) SCC 382]
6. *'Pratap Mehta & Ors. vs. Sunil Gupta & Ors.'* [2019(5) RCR (Civ.) 109]
7. *'Goa State Cooperative Bank Ltd. vs. Kurtarkar Traders'* [2009(13) RCR (Cri.) 891]
8. *'Nandlal Khodidas Barot vs. Bar Council of Gujarat & Ors.'* [1981 AIR (SC) 477]
9. *'P.C. Chaturvedi vs. Bar Council of UP & Ors.'* [1977 CriLJ 897]
10. *'Sub-Divisional Officer, Sardar, Faizabad vs. Shambhoo Narain Singh'* [1969(1) SCC 825]

Counsel have been heard at length. During the course of arguments a suggestion was also put to settle the matter amicably since

the parties involved were of the same legal fraternity. However, the petitioner did not evince any inclination to this suggestion.

The 1961 Act was enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Section 2 of the 1961 Act contains the definitions, the ones relevant to the case in hand are reproduced herein below :

“2. Definitions - In this Act, unless the context otherwise requires, -

(d) ‘Bar Council’ means a Bar Council constituted under this Act;

(e) ‘Bar Council of India’ means the Bar Council constituted under section 4 for the territories to which this Act extends;

(m) ‘State Bar Council’ means a Bar Council constituted under section 3;”

The definitions reproduced above make it clear that the term Bar Council would include both the Bar Council of India as also a State Bar Council since both are constituted under the provisions of the 1961 Act.

Section 3 of the 1961 Act pertains to State Bar Councils and for the purposes of this case the relevant provision is Section 3(d) which reads as under :

“3. State Bar Councils - (1) There shall be a Bar Council-

(d) for the States of Punjab and Haryana and the Union territory of Chandigarh, to be known as the Bar Council of Punjab and Haryana;”

The respondent in the present case is the creation under Section 3(d) of the 1961 Act.

The functions of State Bar Councils and the Bar Council of India are detailed in Sections 6 and 7 of the 1961 Act which read as under:

“6. Functions of State Bar Councils - (1) The functions of a State Bar Council shall be -

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;

(e) to promote and support law reform;

(ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(eee) to organise legal aid to the poor in the prescribed manner;

(f) to manage and invest the funds of the Bar Council;

(g) to provide for the election of its members;

(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions.

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of -

(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

7. Functions of Bar Council of India - (1) The functions of the Bar Council of India shall be -

(a) deleted

(b) to lay down standards of professional conduct and etiquette for advocates;

(c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

(ia) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(ib) to organise legal aid to the poor in the prescribed manner;

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;

(j) to manage and invest the funds of the Bar Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act;

(m) to do all other things necessary for discharging the aforesaid functions.

(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of -

(a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

(3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.”

Section 9 of the 1961 Act is about constitution of disciplinary committees and reads as under :

“9. Disciplinary committees - (1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964) may dispose of the proceedings pending before it as if this section had not been amended by the said Act.”

A bare perusal of Section 9 of the 1961 Act shows that it draws no distinction between constitution of disciplinary committees by the Bar Council of India or the State Bar Council because the phrase used in this section is ‘Bar Council’ which, as per Section 2(d) of the 1961 Act, means a Bar Council constituted under the said Act and would, hence, encompass both the Bar Council of India and a State Bar Council.

Section 15 of the 1961 Act is about power to make rules and this provision applies to both the Bar Council of India and a State Bar Council as the phrase used here is ‘Bar Council’. Section 28 of the 1961 Act pertains to the power of a State Bar Council to make rules to carry

out the purposes of Chapter-III. Section 49 of the 1961 Act relates to the general power of the Bar Council of India to make rules for discharging its functions under the Act and for the present case the relevant provision is Section 49(1)(f) which reads as under :

“49. General power of the Bar Council of India to make rules - (1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe -

(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;”

Chapter-V of the 1961 Act is titled ‘Conduct of Advocates’.

Sections 35 and 36 in this chapter read as under :

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.

36. Disciplinary powers of Bar Council of India - (1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3) The disciplinary committee of the Bar Council of India, in disposing of any case under this section, shall observe, so far as may be, the procedure laid down in section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of

section 35, and where any proceedings have been withdrawn for inquiry before the disciplinary committee of the Bar Council of India, the State Bar Council concerned shall give effect to any such order.”

Under Section 37 of the 1961 Act, an appeal against an order passed by the disciplinary committee of a State Bar Council is maintainable to the Bar Council of India and such appeal is to be heard by a disciplinary committee of the Bar Council of India. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Sections 36 or 37 may prefer an appeal to the Supreme Court of India under Section 38 of the 1961 Act.

As per Section 42 of the 1961 Act, the disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed.

All proceedings before a disciplinary committee of a Bar Council are deemed to be judicial proceedings. As per the proviso to Section 42(4) of the 1961 Act, no final orders of the nature referred to in sub-section (3) of Section 35 shall be made in any proceeding unless the Chairman and other members of the disciplinary committee are present. Thus, no order dismissing or filing a complaint, reprimanding an Advocate, suspending an Advocate from practice or removing an Advocate from the State Roll of Advocates can be passed in the absence of the Chairman or any member of the disciplinary committee.

The Bar Council of India has made the Bar Council of India Rules (hereinafter referred to as the 'BCI Rules') in exercise of its rule-making powers under the 1961 Act. Part-VII of the BCI Rules is titled 'Disciplinary Proceedings and Review' and Chapter-I thereof pertains to 'Complaints against Advocates and Procedure to be followed by Disciplinary Committees of the State Bar Council and the Bar Council of India'. A complaint against an advocate can be submitted or be taken up suo-moto in accordance with these provisions of the BCI Rules. Rules 1 to 5 of Part-VII Chapter-I of the BCI Rules, read as under :

“A. Complaint and Enquiry under Sections 35, 36 and 36B of the Act

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 the 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 complainant to furnish within a time to be fixed by it,

further and better particulars and may also call for the comments from the advocate 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 authorised representative.

(2) If the Disciplinary Committee requires or permits, a complainant may file a replication within such time as may be fixed by the Committee.

4. The Chairman of the Disciplinary Committee shall fix the date, hour and place of the enquiry which shall not ordinarily be later than thirty days from the receipt of the reference. The Registrar shall give notice of such date, hour and place to the complainant or other person aggrieved, the advocate concerned and the Attorney General or the Additional Solicitor General of India or the Advocate General as the case may be, and shall also serve on them copies of the complaint and such other

documents mentioned in Rule 24 of this Chapter as the Chairman of the Committee may direct at least ten days before the date fixed for the enquiry.

5.(1) The notices referred to in this Chapter shall subject to necessary modification, be in Form Nos.E-1 and E-2 be sent to the advocates appearing for the parties. Notice to a party not appearing by the advocate shall be sent to the address as furnished in the complaint or in the grounds of appeal. The cost of the notices shall be borne by the complainant unless the Disciplinary Committee otherwise directs.

(2) The notices may be sent ordinarily through messenger or by registered post acknowledgement due and served on the advocate or the party concerned or his agent or other person as provided for in Order V of the Civil Procedure Code.

(3) Notice may also, if so directed by the Committee be sent for service through any Civil Court as provided for under Section 42(3) of the Advocates Act.

(4) Where the notice sent to any party cannot be served as aforesaid it may be served by affixing a copy thereof in some conspicuous place in the office of the Bar Council, and also upon some conspicuous part of the house (if any) in which the party concerned is known to have last resided or had his office, or in such other manner as the

Committee thinks fit. Such service shall be deemed to be sufficient service.

(5) Payment of bills and/or charges for summons to witness etc. shall be in accordance with the rules under Section 49(h) of the Act.”

A reading of the above reproduced provisions of the 1961 Act and the BCI Rules make the following points clear :

- a) The Bar Council of India and the State Bar Councils are creations of a statute viz. the 1961 Act;
- b) The functions of both the Bar Council of India and the State Bar Councils are detailed in the 1961 Act;
- c) The procedure to be adopted by the Bar Council of India and the State Bar Council to carry out their respective functions are given in the BCI Rules;
- d) A State Bar Council can entertain and determine cases of misconduct against advocates on its rolls. The State Bar Council can examine a complaint against an Advocate and may call for his comments. Thereupon, or even without calling for the comments, the State Bar Council can file/reject the complaint or refer it to its disciplinary committee;
- e) The State Bar Council cannot pass any punitive order against an Advocate while dealing with a complaint against him, it can only refer the complaint to its disciplinary committee or may file/reject the same;

- f) Once a complaint has been referred to the disciplinary committee, the enquiry is undertaken by the disciplinary committee alone. No prior notice to the Advocate from the State Bar Council is necessary before referring the complaint against him to a disciplinary committee. The notices are to be issued by the disciplinary committee;
- g) The final decision in the enquiry against the Advocate is taken by the disciplinary committee alone i.e. the disciplinary committee alone decides if a complaint is to be dismissed/filed or some punitive action is to be taken against the Advocate;
- h) The conclusion of an enquiry by the disciplinary committee leads to the passing of an order which cannot be overturned by the State Bar Council. The disciplinary committee does not give recommendations but passes an order;
- i) The final order in the enquiry is prepared and supplied to the parties by the disciplinary committee and not by the State Bar Council;
- j) The order passed by a disciplinary committee of a State bar Council is appealable to the Bar Council of India;
- k) In case a State Bar Council rejects a complaint against an Advocate without referring it to the

disciplinary committee, such an order is not appealable.

These, broadly, are the points culled out from the provisions of the 1961 Act and the BCI Rules in regard to disciplinary proceedings against an Advocate.

In the present case, after taking suo-moto cognizance of the comments posted by the petitioner on Facebook, the complaint against the petitioner was registered and on 04.08.2020 the Chairman of the State Bar Council (respondent) ordered issuance of a show cause notice calling for a reply within one week. Though under the BCI Rules, the State Bar Council (respondent) is empowered to seek further comments from the Advocate, which seemingly was also the intention in the present case, the communication to the petitioner (Annexure P-6) was termed as a show cause notice. Be that as it may, the State Bar Council (respondent) received no reply from the petitioner within the time granted. The petitioner denies receipt of the notice Annexure P-6.

Rule 2 of the BCI Rules reproduced above lays down that before referring a complaint under Section 35(1) of the 1961 Act to one of its disciplinary committees, the Bar Council (State Bar Council or the Bar Council of India) may require a complainant to furnish within a time to be fixed by it, further and better particulars and may also call for the comments from the advocate complained against. Thus, before the disciplinary committee takes stock of a complaint, the Bar Council can call for further comments from the Advocate complained against. In the present case this was done on 04.08.2020 when the notice Annexure P-6 was sent to the petitioner by Whatsapp and Speed-post.

Rule 5(2) of the BCI Rules lays down that notices may be sent ordinarily through messenger or by registered post acknowledgement due and served on the advocate or the party concerned or his agent or other person as provided for in Order V of the Civil Procedure Code. According to Order V Rule 9(3) CPC, the services of summons may be made by delivering or transmitting a copy thereof by registered post acknowledgement due, addressed to the defendant or his agent empowered to accept the service or by speed post or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

In the present case, the notice Annexure P-6 was sent to the petitioner on the phone through WhatsApp. The notice was also sent to him by Speed-post. The petitioner has denied receiving the notice by either of these modes. As far as the notice sent to the petitioner by post is concerned, this Court is satisfied that the same did not comply with the reasonable care which ought to have been taken to discover the address of the noticee before issuing the notice. The notice Annexure P-6 was simply addressed to “*Sh. Vijay Bharat Verma, Ludhiana, Distt. Courts, Ludhiana*”. This Court is unable to fathom as to how a Postman is to determine to whom he is to deliver the notice with such scant particulars. The addressee may or may not be an Advocate, if the notice was intended to be sent to an Advocate atleast the word Advocate ought to have been mentioned. Further, the District Courts at Ludhiana are having thousands of lawyers practising there. The petitioner claims to have a designated

chamber in the District Court Complex but his chamber address or residential address is not mentioned on the notice. The respondent has not placed on the record any postal acknowledgement proving that the notice Annexure P-6 was duly served upon the petitioner. Every lawyer who is enrolled with a State Bar Council has to fill a form giving his/her particulars including full address. The full address of the petitioner would, thus, be available in the records of the State Bar Council (respondent). However, the notice (Annexure P-6) was still sent by merely mentioning District Court Complex in the address line without specifying any chamber number or even mentioning 'Advocate' next to the name of the addressee or sending the same to the address of the petitioner available in the records of the State Bar Council (respondent). Without there being any proof of the said notice Annexure P-6, with incomplete particulars, having been served upon the petitioner when it was dispatched by post, it cannot be presumed that the same was received by the petitioner.

The State Bar Council (respondent) also sent the notice dated 04.08.2020 (Annexure P-6) to the petitioner via WhatsApp and it has been contended that the petitioner read the same since two blue ticks appeared under this message. Service of notices through WhatsApp was recently approved by the Supreme Court, though with certain riders. On 10.07.2020 the Supreme Court took up for hearing Suo Moto Writ Petition (C) No.3/2020 'In Re Cognizance For Extension of Limitation'. While dealing with I.A. No.48461/2020 - Service of all notices, summons and exchange of pleadings - the Apex Court ordered "*Service of notices, summons and exchange of pleadings/documents, is a requirement of*

virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date". Thus, in the current situation prevailing due to the Covid-19 Pandemic, if a notice was/is to be sent on WhatsApp, then the same must also be sent via email on the same date. This would imply that a notice can be sent via WhatsApp only if the sender also has the email address of the notice available with him so as to also send the notice by email. Even if it is presumed that the notice Annexure P-6 was received by the petitioner on WhatsApp and he read the same, there is nothing on the record that it (the notice Annexure P-6) was emailed to the petitioner on 04.08.2020 i.e. the day on which it was sent to him on WhatsApp. The mandate of the Supreme Court was not fulfilled and it cannot be held that there was valid service upon the petitioner of the notice Annexure P-6 via Whatsapp.

Even if, for the sake of arguments, it is taken that the notice Annexure P-6 was served upon the petitioner, it (the notice Annexure P-6) does not indicate under which provisions of the 1961 Act or the BCI Rules it had been issued. There is no mention therein that the State Bar Council (respondent) was contemplating taking any punitive action

against the petitioner. The State Bar Council (respondent) ought to have stated in the notice Annexure P-6 that the House intended to impose an interim penalty of suspending the petitioner's licence to practice so as to provide adequate and meaningful opportunity to the petitioner to show cause against the same. No such punitive action by the House of the State Bar Council (respondent) can even be inferred or is even suggested from a reading of the notice Annexure P-6. An order suspending the licence to practice of an Advocate operates to his prejudice not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of his professional career which can be described as a civil death.

The Court is, hence, satisfied that the notice Annexure P-6 was not proper, was defective and it was also not properly addressed or served either electronically or by post.

Though no notice was mandatorily required to be issued by the State Bar Council (respondent) upon the petitioner before referring the complaint against him to the disciplinary committee, the State Bar Council (respondent) having done so, ought to have sent it to a proper and complete address while mentioning the action contemplated against the petitioner. After issuing such a notice which fulfilled the requirements mentioned above and on expiry of the time granted to the petitioner, the State Bar Council (respondent) could have :

- a) granted the petitioner more time to submit his comments, or
- b) examined the complaint and filed it, as it can pass such order as it may deem fit to pass under Rule 1(3) of Part-VII Chapter-I of the BCI Rules it, or

- c) referred the complaint to it's disciplinary committee in accordance with Section 35(1) of the 1961 Act and Rule 1(3) of Part-VII Chapter-I of the BCI Rules.

On 14.08.2020, the State Bar Council (respondent) adopted the third option and referred the suo-moto complaint to it's disciplinary committee. Further, while referring the complaint to it's disciplinary committee, the State Bar Council (respondent) also suspended the licence to practice of the petitioner for the period while the matter was enquired into by the disciplinary committee. This action was completely beyond the power of the State Bar Council (respondent). There is no provision in the 1961 Act or the BCI Rules which empowers the State Bar Council (respondent) to pass an order of punishment, even in the interim, against an Advocate. Section 35(3) of the 1961 Act gives the power of reprimanding, suspending from practice or removing the name of an Advocate from the State Roll only to the disciplinary committee. Even the BCI Rules do not bestow any such power on the State Bar Council (respondent).

Mr. Munjal, learned counsel appearing for the State Bar Council (respondent) has not been able to point out the provision in the 1961 Act and the BCI Rules which gives power to the State Bar Council (respondent) to pass a punitive order against an Advocate. Mr. Munjal has attempted to justify this action by placing reliance on a judgement passed by the Division Bench of the Madras High Court in **'K. Sathyabal vs. Bar Council of Tamil Nadu and Puducherry & Ors.'** [2016(3) MLJ 714] to contend that the disciplinary committee is a creature of the State

Bar Council (respondent) and what such a disciplinary committee can do can always be done by the State Bar Council.

This Court, with due respect to the Division Bench, is unable to subscribe to the reasoning given by the Madras High Court in the judgement of Sathyabal's case supra. All the relevant provisions of the 1961 Act and the BCI Rules dealing with disciplinary proceedings against an Advocate have not been considered. The functions and powers of a State Bar Council and its disciplinary committees available by the mandate of law have been allowed to over-lap though the law clearly delineates the same. Moreover, before the Madras High Court the challenge was primarily to two orders, namely (i) an order prohibiting the petitioners therein from practising in any Court pending disciplinary proceedings, and (ii) an order passed by the Chairman of the Bar Council of India transferring the disciplinary proceedings from Tamil Nadu to Karnataka. In fact, the reasoning given by the Madras High Court, from which Mr. Munjal has sought to draw strength, is that *"What a creature can do, can always be done by its creator. If the Disciplinary Committee is a creature of the Bar Council, what such a Disciplinary Committee can do, can always be done by the Bar Council. Therefore, the power conferred upon the Disciplinary Committee of the Bar Council of India under Section 36(2) can always be exercised by the Bar Council of India itself"*. These observations by the Madras High Court were with respect to transfer of the disciplinary proceedings by the Bar Council of India from Tamil Nadu to Karnataka since under Section 36(2) of the 1961 Act disciplinary proceedings pending before a disciplinary committee of a State Bar Council can be transferred to the disciplinary committee of the

Bar Council of India either on the own motion by the disciplinary committee of the Bar Council of India or on a report by a State Bar Council or on an application made by any person interested. The judgement arose out of an unprecedented situation witnessed by the Madras High Court and cannot be treated as a precedent.

A Division Bench of the Orissa High Court in 'Girija Prasanna Panda vs. Orissa State Bar Council & Ors.' [2001 (II) OLR 216] while dealing with a somewhat similar situation as in the present case, held that *"From the brief resume of different provisions of the Act made above, it is evident that, although under Section 6(1) of the Act function of the State Bar Council is to entertain and determine the cases of misconduct against advocates, on its roll, it has to refer such cases of misconduct to the Disciplinary Committee as envisaged under Section 35. The Disciplinary Committee on enquiry may inflict any of the penalties prescribed under sub-section (3) of Section 35. The State Bar Council has thus no power to impose any penalty. When the Act does not confer jurisdiction on the State Bar Council to inflict any punishment, a fortiori, it cannot pass any interim order imposing penalty"*. This Court is in agreement with the reasoning given by the Orissa High Court which decision was not brought to the notice of the Madras High Court when it decided Sathyabal's case supra.

It is a well-accepted principle that a body created by a statute must conform to the provisions of the regulating statute. In the present case, the power of taking any punitive action against an Advocate for misconduct vests under Section 35 of the 1961 Act only with the disciplinary committee of the State Bar Council (respondent). The

procedure for taking such action has been detailed in the BCI Rules. It is trite law that a body created by a statute only has powers granted expressly or by implication in that statute. There is no specific or implied 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. A statutory body like the State Bar Council has to justify exercise of its powers within the four corners of the statute which has created it. The State Bar Council (respondent) has been unable to satisfactorily discharge this onus in the present case.

The objection by the learned counsel for the State Bar Council (respondent) about the maintainability of present civil writ petition in view of an alternate remedy available to the petitioner under Section 48-A of the 1961 Act is without merit. According to learned counsel for the State Bar Council (respondent), since the matter has been disposed of by it, hence, a revision under Section 48-A of the Advocates Act, 1961 would be maintainable before the Bar Council of India. This argument raised on behalf of the State Bar Council (respondent) does not hold any water. Section 48-A of the 1961 Act reads as under :

“48-A. 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.”

The above reproduced Section 48-A is a part of Chapter-VI of the 1961 Act under the heading ‘Miscellaneous’. For Section 48-A of the 1961 Act to be applicable, the conditions to be satisfied are :

- It is the Bar Council of India which has to call for the record of any proceeding;
- The proceeding should have been disposed of by the State Bar Council;
- No appeal lies from such proceeding of the State Bar Council.

Thus, unlike the appellate provisions contained in Chapter-V of the 1961 Act under the heading ‘Conduct of Advocates’ under Sections 37 and 38, whereunder an appeal can be preferred by an aggrieved person against an order passed by the disciplinary committee of the State Bar Council or the Bar Council of India, the power of revision can be exercised suo-moto by the Bar Council of India. In disciplinary proceedings under Chapter-V of the 1961 Act, the remedies available to a person aggrieved are of filing an appeal under Section 37 or 38 of the 1961 Act or filing a review under Section 41 of the 1961 Act. Further, for invoking the revisional powers by the Bar Council of India the proceeding by the State Bar Council should have been disposed of i.e. decided finally. In the present case the State Bar Council (respondent) did not decide finally or conclude the disciplinary proceeding against the petitioner. Rather, it referred the matter to its disciplinary committee. There was no final

conclusion to the proceedings before the State Bar Council (respondent) on 14.08.2020. There can, thus, be no applicability of Section 48-A of the 1961 Act to the impugned resolution dated 14.08.2020 (Annexure P-1).

A very severe and stringent action of suspending the licence to practice of the petitioner has been taken by the State Bar Council (respondent) which action is in excess of the jurisdiction vested in it. The right to the petitioner's livelihood has been suspended without the State Bar Council (respondent) having any power to do so under the 1961 Act and the BCI Rules.

In view of the discussion above, this Court is satisfied that the notice Annexure P-6 issued to the petitioner was defective, not properly addressed and not properly served, either by WhatsApp or by post. The impugned resolution/order (Annexure P-1) passed thereafter to suspend the licence to practice of the petitioner, while referring the complaint to the disciplinary committee, has been reached while exercising powers which do not vest in the State Bar Council (respondent) under the 1961 Act and the BCI Rules. The provisions of the 1961 Act and the BCI Rules do not bestow power on the State Bar Council (respondent) to suspend the licence to practice of an Advocate while referring the complaint against him to its disciplinary committee. The question of law framed in this case is answered in the negative.

For the reasons recorded above, the Court is left with no option but to quash the impugned resolution/order dated 14.08.2020 (Annexure P-1) qua the petitioner. So ordered. Since the notice Annexure P-6 has also been held to be defective, for the reasons detailed above, the reference by the State Bar Council (respondent) of the complaint against

the petitioner to its disciplinary committee pursuant to such defective notice cannot also be sustained. For the same reason, the consequent proceedings before the disciplinary committee of the State Bar Council (respondent) are unsustainable. The impugned notice Annexure P-6 and the proceedings pending against the petitioner before the disciplinary committee, including the notice Annexure P-3, are also liable to be quashed. So ordered.

The other grounds of challenge as to whether certain posts on social media by an Advocate can be termed as misconduct are not being answered as this Court has found in favour of the petitioner on the other points raised on his behalf.

Under the BCI Rules reproduced above, the reference to the disciplinary committee of the State Bar Council (respondent) can be made by the State Bar Council (respondent) without issuing any notice to the Advocate complained against. Since the impugned resolution/order Annexure P-1 qua the petitioner and the impugned notices Annexures P-3 and P-6 have been quashed on account of error by the State Bar Council (respondent) in the exercise of its jurisdiction, this Court deems it appropriate to observe that it is always open to the State Bar Council (respondent) to initiate fresh proceedings against the petitioner, if so advised, in accordance with law.

The present writ petition is, thus, disposed off in the terms indicated above.

(ALKA SARIN)
JUDGE

23.11.2020

Yogesh Sharma

NOTE:

Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO