

\$~48

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 22<sup>nd</sup> February, 2023*

+ **W.P.(C) 2268/2023 and CM APPL. 8612/2023, 8613/2023**

MALVIKA CHOUDHARY & ORS. .... Petitioners

Through: Mr. Rajiv Nayar, Sr. Adv. Mr. Mohit Mathur, Sr. Adv., Mr. Ashish Dholakia, Sr. Adv. with Mr. Prosenjeet Banerjee, Mr. Manik Dogra, Mr. Apoorv P. Tripathi, Mr. Dheeresh K Dwivedi and Mr. Mayank Gupta, Advocates with all Petitioners i.e., Ms. Malvika Choudhary, Ms. Mansi Sharma, Ms. Astha Baderiya and Mr. Alok Saxena, in person.

versus

BAR COUNCIL OF DELHI & ANR. .... Respondents

Through: Mr. Ajay Kumar Agarwal and Mr. Sachin Jain, Advocates for BCD. Mr. Anand Datwani, for R-2 (M: 9811032404).

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by four lawyers challenging the impugned notices issued by the Bar Council of Delhi (*hereinafter* "BCD") dated 13<sup>th</sup> February, 2023 calling upon the Petitioners to be present in person on 24<sup>th</sup> February, 2023 at 4.00 pm at the BCD's office. The notice reads as under:

*"Sir/Madam,*

*Bar Council of Delhi in its meeting held on 06th February, 2023 considered the above cited subject.*

*(Copy enclosed)*

*You are hereby directed to file your reply (25 copies) on receipt of this notice with an advance copy to the complainant and you. are further directed to be present in person on 24<sup>th</sup> February, 2023 at 4.00 PM, (Friday) in the office of the Bar Council of Delhi at 2/6, Siri Fort Institutional Area, Khel Gaon Marg, New Delhi - 110 049, failing which matter will be proceeded ex-parte in your absence and necessary action as per law will be taken.”*

3. The said notice also calls upon the Petitioners to file a reply (25 copies) giving advance copy to the Complainant.

4. The notices which are under challenge by the Petitioners are pursuant to a complaint filed by the authorised representative of Respondent No. 2- Mr. Anand Datwani who is present in Court. The concerned complaint was filed on 13<sup>th</sup> January, 2023.

5. The submission of Id. Sr. Counsels appearing for the Petitioners is that the present complaint of which the BCD has taken cognisance of, is the second complaint on the same allegations. The first complaint was filed by the Respondent No. 2 on 9<sup>th</sup> November, 2022. In the said complaint, the BCD had taken the following decision: -

*“Mr. Sanjay Rathi, Hony. Secretary of the Council recused himself and did not participate in the present matter.*

*Present complainant in person. He made submissions at length. Complaint perused. The complainant has filed the present complaint against the respondent, basically on the ground that one Mr. Janak Datwani, who had no authority on behalf of their company, authorized the respondents to contest the cases which is legally incorrect. All these matters are sub-judice and the key issue lies is whether or not Mr. Datwani*

*was debarred by the company. It is a management issue among themselves. There is no case of misconduct made out on the part of the respondent, at this stage. However, the complainant is at liberty to press the issue before the Court of competent jurisdiction. The complaint is accordingly dismissed.”*

6. However, thereafter, Respondent No. 2 approached the Id. Trial Court by way of an application wherein the trial court dealing with **CC No. 10733/2021** titled **State v. Janak Datwani** which is a criminal complaint, in an application filed by **C.N.A Exports Pvt. Ltd** passed the following order:-

*“It is stated by Counsel for complainant/applicant that in order dated 27.10.2022 it has been recorded that Ms. Mansi Mridula Sharma, Advocate; Mr. Alok Saxena; Ms. Aastha Baderia, Advocate and Ms. Malvika Chaudhary, Advocate have not placed any vakalatnama on record for appearing on behalf of accused and have been attending the Court without any agency or authority to pursue the matter on behalf of accused and there is no vakalatnama in their favour. It is stated that on 02.06.2022, Mr. Alok Saxena, Advocate filed an application not signed by the accused for cancellation of NBWs, without vakalatnama. Advocate Aastha Baderia conducted file inspection on 17.08.2022 and an application, seeking discharge of advocate Ms. Mansi Mridula Sharma was on 27.10.2022 without any authority. Such acts on behalf of Advocates appearing for accused are serious and acts of professional misconducts under Indian Advocates Act and are also not as per the practice directions of Hon'ble High Court of Delhi. It is stated that complaints were filed against said Advocates before Bar Council of Delhi and said complaint was dismissed. The complainant/applicant wants to press this issue before the Court in the absence of BCD having powers of reviewing their orders and there directions are sought from this Court. Further it is*

*prayed that direction may be given to Ms. Mansi Mridula Sharma, Advocate to disclose complete particulars of Mr. Alok Saxena, Advocate who had appeared on her behalf to this Court.*

*Arguments are already heard. Record perused.*

*The present application has been filed by the applicant regarding professional mis-conduct of certain Advocates and the Advocates Act, prescribes the machinery for addressing the said grievance of the applicant/complainant. The order dismissing the complaint filed by applicant herein before BCD may have been dismissed but that does not mean that Bar Council of Delhi has no jurisdiction to entertain complaints regarding misconduct of Advocates. In view of the submissions made hereinabove by the applicant/complainant and overall facts and circumstances it is appropriate that applicant/ complainant takes, recourse to remedies available under the Advocates Act for the grievances regarding misconduct of Advocates.*

*Application is accordingly disposed of.”*

7. On the strength of this order, the second complaint dated 13<sup>th</sup> January, 2023 has been filed by the Respondent No. 2, where notice has been issued. The stand of the Petitioners is that a second complaint on identical allegations could not have been entertained by the BCD. It is their submission that such a course of action was not even contemplated or permitted in the order dated 7<sup>th</sup> January, 2023 passed by the Id. CMM.
8. On behalf of the Respondents, Mr. Ajay Kumar Aggarwal, Id. counsel appearing for the BCD submits that the BCD merely issued notice for the Petitioner to file their replies and for appearing before the BCD.
9. Mr. Anand Datwani, who represents Respondent No. 2 submits that in the various proceedings including the criminal complaints and other matters,

the four Petitioners, who are lawyers have appeared before the various Courts and forums without proper authorisation of Mr. Janak Datwani. It is his claim that Mr. Janak Datwani is not even in India. He claims that no *vakalatnama* was filed by them and, in fact, despite giving assurances to the Court, Mr. Janak Datwani did not appear on 22<sup>nd</sup> October, 2022.

10. This matter according to Mr. Anand Datwani deserves to be looked into by the Disciplinary Committee of the BCD pursuant to the liberty given by the Id. CMM.

11. The Court has perused the present record and after hearing submissions of the parties, the *prima facie* position which emerges is that the complaints which have been filed are identical in nature before the BCD. The first complaint was dismissed by BCD but the second complaint has been entertained. Mr. Anand Datwani submits that the two complaints are not identical and their distinguishable factor is the order passed by the Id. CMM. There is another cause for concern which has been raised on behalf of the Petitioners that the Secretary of the BCD is Mr. Sanjay Rathi, who also represents Mr. Anand Datwani.

12. The crux of the dispute appears to be a family dispute involving the Datwani family including Mr. Anand Datwani and Mr. Janak Datwani into which Counsels representing one side i.e., Mr. Janak Datwani have been embroiled and roped in. The Court also notices with some concern that on a regular basis, there are several petitions which are filed relating to complaints against advocates, where BCD is delaying the examination of the same. The same kind of alacrity which is shown in the present case does not usually appear to be shown, of which judicial notice can be taken by this Court. The first complaint was disposed of in November, 2022.

Immediately, thereafter a second complaint is filed on 13<sup>th</sup> January, 2023. and notice is issued on 13<sup>th</sup> February, 2023.

13. In this background of a family dispute, lawyers being put to harassment and frustration due to repeated Bar council complaints cannot be countenanced unless some serious case of misconduct is made out. The present petition deserves consideration of this Court. Accordingly, it is directed as under: -

- i) The BCD shall place on record a detailed chart giving the details of all pending complaints against Advocates, which shall include the dates of filing of those complaints and the dates of first notices in all those matters. If there are any second complaints which have been filed and entertained, the same shall be reflected in the chart separately.
  - ii) Secondly, the hearing which has been fixed on 24<sup>th</sup> February, 2023 shall stand adjourned and the proceedings in the complaint against the Petitioners, shall remain stayed till further orders of this Court.
  - iii) The chart shall be filed by the BCD, within six weeks.
14. List on 20<sup>th</sup> April, 2023.
15. Order *Dasti*.

**PRATHIBA M. SINGH**  
**JUDGE**

**FEBRUARY 22, 2023**

*mr/am*