



REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 7383 OF 2023

Geeta Ramanugrah Shastri,
Indian Adult, Hindu Inhabitant, Aged 63
years, Occ.:Advocate, Residing at 23/5
Kailas, 50 Pedder Road, Mumbai-400 026.

...Petitioner

~ versus ~

- 1. Bar Council of Maharashtra and Goa,**
Statutory body corporate set up under the provision of the Advocates Act, 1961, having its office at 2nd Floor, High Court Extension, Fort, Mumbai 400 032.
- 2. Bansidhar Annaji Bhakad,**
Aged 60 years, Occ.:Advocate, Indian Inhabitant, Residing at 004/B/106, Sriprastha Complex, Nalasopara (W), Taluka Vasai, Dist. Palgar, Maharashtra.
- 3. Bar Council of India,**
19, Rouse Avenue Institutional Area,

APPEARANCES

FOR THE PETITIONER	Mr Vishal Kanade, <i>i/b Akshay Shinde.</i>
FOR RESPONDENT NO. 1	Mr Makrand Bakore.
FOR RESPONDENT NO. 2	Mr NR Pradhan, <i>with JJ Satghar, i/b VL Gurav.</i>
FOR RESPONDENT NO. 3	Mr Shekhar Jagtap.

**CORAM : G. S. Patel &
Neela Gokhale, JJ.**

DATED : 9th August 2023

ORAL JUDGMENT (Per G.S. Patel, J.):-

1. **Rule**, returnable forthwith. There is an Affidavit in Reply of the 2nd Respondent filed on record.

2. This is a most unfortunate case. The Petitioner is an advocate of this Court. She has been in practice since about 1985. She has worked on the Appellate Side of this Court as an Assistant Government Pleader for several years and then as an Assistant Government Pleader and an Additional Government Pleader on the Original Side. The 1st Respondent is the Bar Council of Maharashtra and Goa (“**BCMG**”). The 2nd Respondent is an individual involved in a litigation that began in the High Court and

was then transferred to the City Civil Court. The 3rd Respondent, added by amendment, is the Bar Council of India.

3. There is a long and convoluted history to the matter. Prayer (a) of the Petition at page 18 reads thus:

a) That the Hon'ble High Court be pleased to issue writ of certiorari and or any other writs, directions or order in nature of certiorari whereby calling for the records, proceedings and papers of the Respondent No 1 - and after examining the legality of the Order cum Report dated 20-09-20220 in D C No 264 of 2017 of Mr Subhash Ghatge - Advocate - Member of Bar Council of Maharashtra & Goa i.e. the Respondent No 1, to quash and set aside the said Order cum Report dated 20-09-2022 in D C No 264 of 2017 of Mr Subhash Ghatge - Advocate - Member of Bar Council of Maharashtra & Goa and further to reject the complaint bearing DC No 264 of 2017;

4. The direct challenge, therefore, is to the order of 20th September 2022 in a Disciplinary Case No. 264 of 2017. That order was passed by an advocate member of the BCMG (the 1st Respondent). A copy of that order is at page 376. It is styled as a 'Report'. The complainant was the 2nd Respondent, Bhakad, and the Writ Petitioner, Ms Geeta Shastri, was the 2nd Respondent to that application.

5. The operative portion of the Impugned Order referred the matter to the Disciplinary Committee of the BCMG for an enquiry. That was on 20th September 2022. No action having been taken within six months, there was an automatic transfer to the Bar

Council of India. Hence the addition of the BCI as a party Respondent.

6. Bhakad's allegations turned on a dispute between him and the Ismail Yusuf Junior College, a State Government educational institution. He was a lecturer there. His services were terminated in by the college with effect from 1st December 1993. Bhakad is, apparently, now a practicing advocate. His case against the college was of wrongful termination. He sought damages of over Rs. 43 lakhs in Suit No. 1204 of 1995, initially filed on the Original Side of this Court. In that suit, the college filed a Written Statement.

7. On the increase of the pecuniary jurisdiction of the City Civil Court, that suit then got transferred to the City Civil Court. It seems that in that suit, the college filed a Chamber Summons seeking an amendment of the Written Statement. The Affidavit in Support of that Chamber Summons had certain documents annexed to it.

8. Bhakad's case is that some of the annexures to the Affidavit in Support of the Chamber Summons were certified as true copies by the Advocate-on-Record, Mr NP Pandit. These included photocopies of a Special Leave Petition, an Original Application before the Maharashtra Administrative Tribunal and so forth. The Chamber Summons and Affidavit were, however, identified under the signature of the Writ Petitioner, Ms Shastri.

9. Bhakad disputed the correctness of these annexures.

10. Cutting a very long story short, it seems that Ms Shastri then filed an Affidavit on 29th August 2016 saying that as far as she was aware there was a practice note requiring Advocates-on-Record (and it is important to note that she was not the Advocate-on-Record and did not sign as such) to endorse that annexures were indeed true copies. She later corrected course in an additional Affidavit dated 7th November 2017 and said that she was mistaken to the extent that there was no official practice note to this regard, but that she maintained that there was indeed such a practice based on an office order of the Prothonotary & Senior Master of this Court.

11. Bhakad's entire case seems to be that when Ms Shastri 'signed' the Affidavit or the Chamber Summons in identification of the deponent, she supposedly and in law *attested to the correctness of the contents of that Affidavit and Chamber Summons to her personal knowledge*. For this reason, Bhakad alleged professional misconduct by Ms Shastri apart from making allegations of falsity and false deposition against the deponent of that Affidavit. He also filed forgery and contempt proceedings. The Petition contains a detailed narrative, but we should not get sidetracked by all the various litigations Bhakad instituted.

12. Ms Shastri herself at no point has been a deponent of any Affidavit in the main lis either in the suit, in a motion, in an Interim Application or in the Chamber Summons, other than the two Affidavits we have mentioned, and which dealt only with the practice to be followed regarding annexures to pleadings and affidavits. The entire case against her, and the whole of it, as

repeated to us again and again on our repeated enquiries is that she 'could not have identified the signature without assuming the responsibility for the correctness of what was stated in the body of that Affidavit'. In other words, since, according to Bhakad, the deponent of that Affidavit has allegedly made incorrect statements or adduced incorrect documentation, Ms Shastri is personally responsible for perjury, forgery, etc.

13. Support is sought to be drawn for this utterly remarkable proposition from the decision of the Supreme Court in *M Veerbhadra Rao v Tek Chand*.¹ This decision is, in our view, of no assistance to Bhakad, the complainant. That judgment clearly indicates that there was a finding of fact returned about the misconduct of the advocate, who acted to the detriment of his client at the instance of an outsider with an interest conflicting with that of his client. The advocate was held to have facilitated the commission of a fraud by becoming a party to the forged document. That was a case of an advocate being empowered to administer oath but failing to do so.

14. That is emphatically not the case before us today. Nobody has disputed the signature of the deponent of the Affidavit in Support of the Chamber Summons, Ms Surekha Sabnis, the then principal holding charge at the college.

15. Bhakad take the case to what we believe is a quite absurd and untenable extent when he says — and he says so in terms through

1 1984 Supp SCC 571.

his advocate Mr Pradhan — that every advocate who identifies or subscribes her signature in the capacity as an Advocate-on-Record of her identification purposes must be held to the correctness of the factual statements made in that Affidavit, even though that Affidavit may be the deposition of an individual litigant. Nothing in Order 19 Rule 3 of the Code of Civil Procedure, 1908 (“CPC”) persuades us to accept this extreme a proposition. That Rule clearly says that Affidavits are to be confined to such facts as the deponent *is able of his own knowledge to prove*. Ms Shastri was not the deponent of the Affidavit in Support of the Chamber Summons. The principal of the college was. The matters, statements and assertions in that Affidavit in Support of the Chamber Summons may have been within the personal knowledge of the deponent within the meaning of Section 106 of the Indian Evidence Act, 1872. By no stretch of the imagination could they have been said to be to the personal knowledge of the Advocate-on-Record.

16. And Ms Shastri was not even the Advocate-on-Record. She merely identified the deponent of that Affidavit.

17. We are somewhat surprised that Mr Pradhan persists in this line of argument without quite realizing the consequence of taking it to its logical conclusion, which to our minds, would inevitably result in the emptying of almost the entire legal profession. No Advocate-on-Record would ever sign anything, and without an Advocate-on-Record, we would not have counsel’s assistance in a single matter. On this one proposition the entire judicial system in this country would be brought to its knees.

18. While on the subject we may note that Bhakad himself has filed an Affidavit dated 6th April 2023. It is affirmed before an Associate of this Court. We note that there is no submission made before us, thankfully, that the Associate is responsible for the contents of that Affidavit. But we do note that the Bhakad is 'identified' specifically by DR Mishra but below that is also the name VL Gurav as the advocate for the 2nd Respondent. Now we must ask this question: whether Mr Mishra and Mr Gurav are willing to take *personal responsibility* or are *personally responsible* for the statements made *inter alia* in paragraphs 5, 8 and 9 of that particular Affidavit? If Bhakad's advocates are not responsible for his statements on affidavit, then we see no reason why a different standard should be applied to the Advocate-on-Record on the other side, let alone to one such as Ms Shastri who was not even the Advocate-on-Record but only identified the deponent of the Affidavit in Support of the Chamber Summons in question.

19. The second argument canvassed before us is that there is an alternate remedy available under the Advocates Act, 1961. To begin with, we do not believe that there is an equally efficacious alternate remedy. The entire recommendation of the matter to the Disciplinary Committee is fundamentally flawed and based on a complete misconception of the role of the Petitioner and the duties that are cast upon her as an advocate at the Bar. More than that, the Report completely overlooks that the Writ Petitioner is first and foremost an officer of the Court. Unless it is shown that there is misconduct within the frame of the statute or that there is a sufficient case made for investigation into that aspect of the matter,

there is no question of pillorying every advocate just because a litigant feels aggrieved in some particular litigation.

20. We are constrained to note that this unfortunately has now become a fashion in this Court, where litigants on one side routinely file complaints with the Bar Council against the advocates of the opposing party. That is a practice to be deprecated in all circumstances. Advocates for the opposite side have a duty to their own clients. They have a duty to the Court, like all advocates do. They have no duty to propound the case of the opposing party. This constant threat of the disciplinary complaints against the opposing counsel is actually being used in several matters that have come before us to intimidate and browbeat opposing counsel, and to ensure that the opponent does not get adequate or proper legal representation. We have had extremely unfortunate cases before us where this was done against a very young advocate, at the Bar just a few months. But for the intervention of his senior, that young advocate's entire life and career would have been ruined — only because of this type of complaint by the litigant on the other side. We perceive our role as Judges quite differently. We are not merely adjudicating this or that dispute. We are equally concerned with standards at the Bar, and we are also concerned that the interest of advocates should not lightly be compromised because of some fanciful notions that a litigant may have. The consequences of such action on the lives and careers of advocates and the attendant emotional and mental trauma are almost indescribable.

21. In our view, there was no merit at all in Bhakad's complaint against Ms Shastri. We see no form of misconduct let alone any kind of misconduct requiring an enquiry of any nature whatsoever.

22. We have not the slightest hesitation in, therefore, making rule absolute in terms of prayer clause (a) set out above. Consequentially, the 3rd Respondent, the Bar Council of India, will pass the necessary directions formally dismissing the complaint in view of this judgment.

23. We would ordinarily, given these circumstances, have been fully justified in imposing costs on Bhakad. But Mr Kanade for the Writ Petitioner tells us on instructions from Ms Shastri who is in the Court that she has no intention of pressing for costs in a matter like this. We appreciate that. In itself, this speaks to some of the best traditions of this Bar on both its Original and Appellate Sides.

(Neela Gokhale, J)

(G. S. Patel, J)