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(2015) 01 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1933 of 2014

Ashok Kumar Yadav — APPELLANT

Vs

The Bar Council of India — RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:
Advocates Act, 1961 — Section 15, 15(1), 35, 35(1), 36
Constitution of India, 1950 — Article 14

Citation : (2015) 01 PAT CK 0040

Hon'ble Judges : Jyoti Saran, J.

Bench : Single Bench

Advocate : Praveen Kumar, for the Appellant; Gyan Prakash Ojha, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyoti Saran, J.

CWJC No. 1933 of 2014 with I.A. No. 1775 of 2014

1. The petitioner, an Ex General Secretary of the District Bar Association, Patna Civil Court has preferred the writ petition praying for the following reliefs:

"I. For issuance of Writ in the nature of Certiorari to quash the following letters/ Memos/orders, issued by the respondent Bihar State Bar Council, Patna.

a. Letter No. 1881/2013 Dt. 3.9.2013.

b. Reference No. 1965/2013 Dt. 10.9.2013 containing resolution No. 114/2013 Dt. 8.9.2013, issued by the Secretary, Bihar State Bar Council.

c. Reference No. 150/2014, Dt. 13.1.2014, containing resolution No. 3/2014 Dt. 11.1.2014 whereby and whereunder the petitioner has been severely punished by adopting discriminatory measures.

II. Further be pleased to pass any other order(s), in the facts and circumstances,

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for which the petitioner is legally or otherwise entitled to."

2. The writ petition was filed on 22.1.2014 and during its pendency the interlocutory application bearing I.A. No. 1775 of 2014 has been filed praying for incorporation of some additional reliefs. Paragraph-1 of the interlocutory application runs as follows:

"1) This I.A. is being filed for addition of the prayer, grounds and some important facts as well in the main writ petition with following effects:--

i) For issuance of a writ in the nature of certiorari to quash the notice dated 22/02/2014 (Annexure-16) issued under the signature of Registrar, Disciplinary Committee, Bihar State Bar Council, Patna, whereby and where under petitioner has been directed to appear before the Disciplinary Committee No. IX on or before 09/03/14.

ii) Further be pleased to stay the operation of impugned notice contained in Annexure-16 during pendency of this writ petition.

iii) Further be pleased to quash the resolution No. 110/2013 dated 01/09/13 (Annexure-17) referred in Annexure-14 of the main writ petition.

iv) Further be pleased to pass any other order or orders in the facts and circumstances of the case in the interest of justice and for the ends of justice."

3. As indicated hereinabove, the petitioner initially questioned the letter dated 3.9.2013 as contained in Annexure-7 which contains Resolution No. 102/2013/31.8.2013 of the Bihar State Bar Council whereby the petitioner having failed to receive the communication of the Bihar State Bar Council requiring him to recall his call for absentation from work on 30.8.2014, was suspended from the post of General Secretary, District Bar Association, Patna and by the same order was required to show cause as to why he be not removed from the said post. The said order also contains a unanimous resolution of the Bihar State Bar Council taking cognizance of misconduct allegedly committed by the petitioner by spending the money of the association over illegal constructions as well as on other matters and whereafter the matter has been referred to the Disciplinary Committee No. IX of the Bihar State Bar Council, for disposal of the matter in accordance with law.

4. The second order questioned in the writ petition is bearing Reference No. 1965/2013 dated 10.9.2013 containing the Resolution No. 114/2013 dated 8.9.2013 of the Bihar State Bar Council as contained in Annexure-9 of the writ petition whereby the petitioner has been removed from the post of General Secretary, District Bar Association, Civil Court, Patna with further direction to him to hand over the charge of office of General Secretary, District Bar Association, Patna to the senior most Joint Secretary of the Association. The Bihar State Bar Council while passing such order has observed that the petitioner did not file his show cause despite service of notice rather arranged a "Dharna" against the decision of the Bihar State Bar Council.

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5. The order of the Bihar State Bar Council as contained in Annexure-9 was questioned by the petitioner before the Bar Council of India by filing a Miscellaneous Petition No. 8 of 2013 alongwith a Stay Petition No. 8 of 2013 and the Bar Council of India vide order passed on 9.9.2013 as contained in Annexure-10 has, while remitting the matter to the Bihar State Bar Council for reconsideration of the matter and for passing a fresh order after giving another opportunity to the petitioner to file a reply to the show cause notice issued to him and to purge and seek an apology, stayed the orders/resolutions dated 3.9.2013 and 8.9.2013 impugned at Annexure-7 and 9 respectively to the present writ petition.

6. The Bihar State Bar Council upon a reconsideration of the matter on remand has confirmed its earlier orders and which is the third order questioned by the petitioner bearing Reference No. 150/2014 dated 13.1.2014 containing Resolution No. 3/2014/11/1/2014 impugned at Annexure-14 to the writ petition.

7. It is while the writ petition questioning suspension and removal of the petitioner from the post of General Secretary, District Bar Association, Patna passed by the Bihar State Bar Council, was pending consideration before this Court, that a notice was issued to the petitioner to present himself before the Disciplinary Committee No. IX bearing Reference No. 541/2014 dated 22.2.2014 and which has been issued under Section 35/36 of the Advocates Act, 1961 (hereinafter referred to as "the Act?) which is sought to be questioned through the interlocutory application. The petitioner while questioning the notice requiring him to attend the proceedings before the Disciplinary Committee of the Bihar State Bar Council has also attempted to question the Resolution No. 110/2013/1.9.2013 communicated vide Reference No. 1960/2013 dated 10.9.2013 placed at Annexure-17 to the interlocutory application which resolution finds mention in the Resolution dated 8.9.2013 circulated vide Reference dated 10.9.2013 impugned at Annexure-9 to the writ petition whereby the petitioner has been removed from the post of General Secretary.

8. I have heard Mr. Praveen Kumar, learned counsel appearing on behalf of the petitioner and Mr. Gyan Prakash Ojha, learned counsel appearing for the Bihar State Bar Council.

9. Mr. Praveen Kumar learned counsel for the petitioner has extensively argued against the action of the Bihar State Bar Council in issuing orders of his suspension and removal from the post of General Secretary, District Bar Association, Patna as also in drawing proceedings for alleged financial irregularities and placing the same for adjudication by the Disciplinary Committee No. IX of the Bihar State Bar Council. It is the augment of Mr. Praveen Kumar that whereas the exercise of power by the Bihar State Bar Council in passing resolutions whereby the petitioner has been removed from the post of General Secretary, District Bar Association is without jurisdiction and is in exercise of powers not vested either under the Act or the rules framed thereunder, learned counsel has also questioned the initiation of proceedings by the Disciplinary

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Committee No. IX of the Bihar State Bar Council on the anvil that it is without sanction of law and also without any foundational basis.

10. The argument of Mr. Praveen Kumar has been contested by Mr. Ojha by relying upon the model rules framed by the Bihar State Bar Council, copy of which is placed at Annexure-A to the counter affidavit filed on their behalf and with reference to Rule 32B thereof it was submitted that the order of removal of the petitioner is within the powers vested in the Bihar State Bar Council. He has further submitted that besides the said position, even otherwise the issue raised by the petitioner has been rendered infructuous in view of the subsequent election whereunder a new body has been constituted.

11. Replying to the issue raised by Mr. Praveen Kumar on the initiation of the disciplinary proceedings sought to be questioned through the interlocutory application, it was contended that the challenge is pre-mature for being entertained at this stage.

12. Responding to the arguments of Mr. Ojha, it was contended by Mr. Praveen Kumar that whereas the model rules placed at Annexure-A to the counter affidavit do not have any legal sanction inasmuch as the Act does not empower the State Bar Council to frame any such rules and thus the action of the Bihar State Bar Council in ordering his removal from the post of General Secretary, District Bar Association, Patna while relying upon the provisions of Rule 32B is patently illegal, he further submits that even the initiation of the disciplinary proceedings by the Disciplinary Committee No. IX of the Bihar State Bar Council has no sanction of law, for in terms of Section 35 of the Act, until such time that the Bihar State Bar Council has "reasons to believe" that any advocate is guilty of professional or other misconduct, it cannot refer any matter to the disciplinary committee for a satisfaction in this regard is a condition precedent to any reference and which is missing in the present case.

13. Learned counsel in support of his submission has relied upon the following decisions:

"(a) Dr Partap Singh and Another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Others,

(b) AIR 1991 SC 1363; paragraph-10

(c) N.G. Dastane Vs. Shrikant S. Shivde and Another, ."

14. Learned counsel has also questioned the decision of the Bihar State Bar Council of being violative of Article 14 of Constitution of India inter alia on grounds that whereas the petitioner has been subjected to disciplinary proceedings, the others have been exonerated.

15. Learned counsel in support of his submission has relied upon the judgment of the Supreme Court rendered in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, and Mrs. Maneka Gandhi Vs. Union of India (UOI)

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and Another, .

16. It is the contention of Mr. Praveen Kumar that Section 35(1) of the Act does not vest any suo motu power in the Bihar State Bar Council to draw any disciplinary proceedings against the petitioner and the word "otherwise" occurring in the provision would neither cover an exercise of "suo motu power" or to draw a proceeding on its own. It was submitted that the enquiry report of the three member committee as contained in Annexure-19 to the interlocutory application is not a reliable report and that a decision to draw a disciplinary proceedings is not a decision of the Bihar State Bar Council which constitutes not only of elected members but even the ex officio members and since there was a dissent by three members of the Bar Council, hence such decision to draw a proceeding cannot be held to be a decision of the Bihar State Bar Council. In support of his submission learned counsel has relied upon a judgment of Madhya Pradesh High Court reported in Radhelal Gupta Vs. State Bar Council of M.P. and Others, . Learned counsel submits that since the procedure adopted by the Bar Council is not in accordance with law hence it should be set aside and for his submission he has relied upon a judgment of this Court reported in 2013 (4) BBCJ Part (V) page 165 (Praveen Kumar v. The Bihar State Bar Council and Ors.). Mr. Praveen Kumar has submitted that though such proceeding is to be concluded within a short period but the situation is that even charges have not yet been framed and which further vitiates the proceedings. Learned counsel for his submission has relied upon a judgment of the Supreme Court reported in An Advocate Vs. Bar Council of India and Another, . Learned counsel has relied upon an unreported judgment of Division Bench of this Court rendered in the case of Brajesh Kumar Singh Advocate v. the Bihar State Bar Council and Ors. arising from LPA No. 74 of 2011, to submit that in similar circumstances'' the disciplinary proceedings pending for quite sometime has been set aside.

17. I have heard learned counsel for the parties and I have perused the materials on record. In the nature of order which this Court proposes to pass it would not require to delve deep into the matter. The challenge made by the petitioner is in two parts. Whereas the writ petition questions the actions of Bihar State Bar Council and the orders passed thereunder whereby the petitioner has been removed from the post of General Secretary, Bihar State Bar Council, the interlocutory application bearing I.A. No. 1775 of 2014 attempts to enlarge the scope of the challenge by seeking permission to also question the proceedings pending before the Disciplinary Committee No. IX together with the notice dated 22.2.2014 as contained in Annexure-16 requiring the petitioner to appear before the committee on or before 9.3.2014. Again whereas the order of the Bihar State Bar Council as contained in Annexure-7 and 9 to the writ petition whereby the petitioner has been removed from the post of General Secretary, Bihar Bar Council is in exercise of powers vested under Rule 32B of the model rules framed by the Bihar State Bar Council duly approved by the Bar Council of India placed on record at Annexure-A to the counter affidavit, the notice as contained in Annexure-16 to the interlocutory application requiring the petitioner to appear

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before the Disciplinary Committee is in exercise of power vested under Sections 35/36 of the Advocates Act, 1961.

18. I shall be considering each of the two issues referred to above one by one.

19. Although the genesis of the two proceedings lies in the resolution dated 3.9.2013 as contained in Annexure-7 whereby the State Bar Council while issuing the order of suspension of the petitioner from the post of General Secretary, District Bar Association, Civil Court, Patna have also issued show cause notice against his proposed removal from the said post, by the same resolution a decision has also been taken to draw a disciplinary proceedings for alleged misconduct on ground of financial irregularities committed by the petitioner in the construction of chambers and other matters and for which the matter has been referred to the Disciplinary Committee No. IX of the State Bar Council for its disposal in accordance with law.

20. Insofar as the issue of suspension of the petitioner from the post of General Secretary, District Bar Association, Civil Court, Patna vide Annexure-7 and his ultimate removal from the said post vide Annexure-9 is concerned, the same is sought to be questioned by learned counsel for the petitioner on grounds that the power exercised by the State Bar Council to pass such order under Rule 32B of the model rules appended at Annexure-A to the counter affidavit does not have force of law for it is not within the confines of the rule making power vested in the State Bar Council under the provisions of the Advocates Act to frame such rules and that the order so passed is perverse, without any foundation, arbitrary, discriminatory and is not a collective decision of the State Bar Council.

21. In this regard it is seen that Chapter-II of the Act in its Section 15 vests power in a Bar Council to make rules and Sub-section (1) thereof confers wholesome power on a Bar Council to make rules to carry out the purposes of the Chapter. Meaning thereby a State Bar Council is fully empowered to frame any rules for carrying out the purposes of the Chapter and Section 6 occurring in Chapter II of the Act elaborates the functions of a State Bar Council and Sub-section (1) (dd) reads as under:

"(dd) to promote the growth of Bar Association 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." 22. Although Section 7(2)(a) refers to the functions of Bar Council of India but Section 6(2) provides that a State Bar Council may constitute one or more funds in the prescribed manner for different purposes and Clause-(a) thereof is for the purpose of giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates.

23. A conjoint reading of Section 15(1) of the Act read with Section 6(1)(dd) and Section 6(2)(a) of the Act clearly empowers the State Bar Council to frame any such rules to promote the growth of Bar Association for effective implementation of its schemes and thus it has a regulatory control over the State Bar

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Associations and in which view of the matter the challenge to the validity of the model rules by learned counsel for the petitioner becomes unsustainable for the model rules in such view of the matter have sanction of law.

24. In so far as the challenge to order on merits, is concerned, what I find is that it is upon consideration of the conduct of the petitioner in neither receiving the orders of the State Bar Council nor taking any steps to recall the order of abstention from attending judicial proceedings or expressing any remorse for his actions, that the order of his suspension followed by removal from post of General Secretary, District Bar Association, Patna was passed.

25. In the aforesaid view of the matter, the resolution of the State Bar Council bearing No. 102/2013/31.8.2013 circulated vide Reference No. 1881/2013/3.9.2013 whereby the State Bar Council while issuing orders of suspension of the petitioner from the post of General Secretary, District Bar Association has also issued show cause notice against proposed removal as well as Resolution No. 114/2013/8.9.2013 circulated vide Reference No. 1965/2013 dated 10.9.2013 as contained in Annexure-9 whereby the petitioner stands removed from the post of General Secretary do not suffer from any legal infirmities warranting any interference and the reasons assigned for passing the orders does not persuade this Court to interfere therewith.

26. An additional factor which does not persuade this Court to interfere with the decision of the State Bar Council in passing orders of removal of the petitioner from the post of General Secretary, District Bar Association, Civil Court, Patna is the statement made by the respondent at Paragraph-11 of the supplementary counter affidavit filed on 3.12.2014 whereunder it is stated that the order so passed was at the virtual end of the tenure of the Committee in which the petitioner was elected as a General Secretary and after his removal a new committee has been constituted for the period 2014-16 for the District Bar Association, Patna as per rules. Hence even on this score, the order of suspension and removal of the petitioner from the post of General Secretary, District Bar Association does not warrant interference.

27. This would bring this Court to the relief sought to be incorporated through the Interlocutory Application bearing I.A. No. 1775/2014.

28. Insofar as the second issue sought to be raised by the petitioner by way of the interlocutory application bearing I.A. No. 1775 of 2014 is concerned, even if a decision to draw a disciplinary proceedings finds mention in the resolution dated 31.8.2013 circulated vide reference dated 3.9.2013 as contained in Annexure-7 and pursuant whereto a formal proceedings have been drawn and the petitioner has been directed to appear before the Committee vide notice dated 22.2.2014, in the opinion of this Court this issue is entirely distinct and is founded on different considerations and has been drawn by the State Bar Council under a distinct exercise of powers. Merely on account of the fact that it finds its origin in the resolution dated 31.8.2013 as contained in Annexure-7 it would not

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inhere in the petitioner to question the initiation of disciplinary proceedings for his alleged misconduct in the present writ petition which was filed to question his removal from the post of General Secretary, District Bar Association. The two actions taken by the State Bar Council acting in different spheres, the petitioner cannot be allowed to amalgamate both of them in the same writ petition and in which view of the matter I.A. No. 1775 of 2014 stands disposed of with liberty to the petitioner to question the initiation of the disciplinary proceedings, if so advised by way of an independent application before an appropriate forum. Be it noted that this Court has expressed no opinion on the merits of the issue raised in the Interlocutory application.

29. Reverting back to the issues raised in the writ petition since this Court is not persuaded to interfere with the orders of suspension and removal of the petitioner from the post of General Secretary, District Bar Association, Patna either on merits or on account of the issue having been rendered infructuous, the writ petition stands disposed of.

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