

(2006) 08 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition No. 8321 of 2006

B.G. Rajashekar, Advocate

APPELLANT

Vs

The Karnataka State Bar Council, The Disciplinary Committee
No. III of Karnataka State Bar Council and Shriram Chits
Bangalore Pvt. Ltd.

RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:

Advocates Act, 1961 — Section 25

Citation : (2006) 08 KAR CK 0064

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M. Sivappa, for the Appellant; Ashok R. Kalyanashetty, for R-1 and R-2 and A. Lourdu Mariyappa, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a member of the Bar, who is facing disciplinary proceedings before the Karnataka State Bar Council - first respondent - pursuant to a complaint lodged by the third respondent, who was a client of the petitioner. The complaint was during the year 2001, at which time the petitioner, as averred in the petition, had withdrawn his professional services to the third respondent; that it was so withdrawn from 1999 onwards.

2. The complaint addressed to the Bar Council inter alia, alleged professional misconduct on the part of the petitioner. On receipt of the complaint, it appears, the Secretary of the first respondent-Bar Council had noted that it is to be placed before the scrutiny committee in terms of the note dated 28-11-2001. The scrutiny committee had given a report on 13-12-2001. The committee was of the opinion that the complainant had made out a prima facie case against the respondent-petitioner and accordingly notice may be issued, calling for explanation within 15 days. This was followed by issuing a notice to the petitioner. It transpires that the petitioner did not respond to the notice, in the

sense the petitioner did not deny or dispute the contents of the complaint but instead sought for further particulars and copies of supporting material said to have been filed along with the complaint etc and whereafter there intervened a state of lull and the matter did not make much progress.

3. Subsequently the first respondent-Bar Council having noticed that while the petitioner had not responded to the show cause notice, the matter had been allowed to lie over and remained dormant, as the file itself had been misplaced, the report of the scrutiny committee dated 13-12-2001 was thereafter taken up for follow up action and the first respondent-Bar Council directed that the matter be placed before the disciplinary committee for proceeding further in the matter. Accordingly the matter was placed before the committee.

4. The records produced by the learned Counsel for the first respondent-Bar Council indicate that the matter was before the meeting of the Bar Council on 21-8-2005 and in terms of the resolution No. 134/2005 it was resolved to place the matter before the disciplinary committee. It transpires that the disciplinary committee initiated further action by calling upon the petitioner to appear and file objections before it, to have the version of the petitioner in the matter. The petitioner has also filed his objections and the matter is in progress before the disciplinary committee.

5. However, in the meanwhile, the petitioner has presented this writ petition, inter alia, contending that the procedure followed by the bar council is not one in consonance with the law laid down by the Supreme Court in the matter of referring a complaint to the disciplinary committee for further action; that the proceedings are flawed and are required to be quashed, particularly the communication issued to the petitioner apprising the petitioner of the proceedings of the Bar Council at its meeting held on 21-8-2005 [copy at Annexure-J] and also the order passed by the disciplinary committee on 11-6-2006 on IA-I filed by the petitioner requesting the disciplinary committee to refer the matter back to the council, as according to the petitioner, the disciplinary committee lacked jurisdiction in the matter, as the reference to the disciplinary committee was not one in accordance with the provisions of Section 35 of the Advocates Act, 1961 [for short, the Act] and therefore the disciplinary committee should not proceed further in the matter.

6. Such an application having been rejected, the present writ petition is filed, challenging both the resolution of the Bar Council as also the order passed by the disciplinary committee declining the prayer of the petitioner for stopping further proceedings.

7. The grounds urged are that the very reference is not in consonance with the provisions of Section 35 of the Act, particularly as interpreted by the Supreme Court in the cases of Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, and Nandlal Khodidas Barot Vs. Bar Council of Gujarat and Others, .

8. Statements of objections have been filed both on behalf of the respondents 1

and 2 - Bar Council and the disciplinary committee - as also on behalf of third respondent-complainant. The petition is contested and the averments are denied. It is urged that the procedure followed has been in consonance with the requirements of law; that it fully satisfies such requirements; that the petition is not a bona fide one; that it is only a misuse of the process of the court to drag on the proceedings; that the petitioner had been involved in a serious misconduct and proper action is warranted in law etc.

9. I have heard Sri M. Sivappa, learned Counsel for the petitioner, Sri Ashok R. Kalyanashetty, learned Counsel for the respondents 1 and 2 as also Sri Lourdu Mariyappa, learned Counsel for the third respondent-complainant.

10. Records of the Bar Council in the matter of the complaint and the further proceedings of the council as also before the disciplinary committee have been placed before the court and I have perused the same. Learned Counsel for the respondents 1 and 2 has also placed before the court the proceedings book of the Council meeting and I have perused the same.

11. The main ground urged by Sri Sivappa, learned Counsel for the petitioner, placing particular reference to the Rulings of the Supreme Court referred to above, is that reference to the disciplinary committee of the Bar Council is not preceded by a proper consideration of the matter on the part of the Bar Council, evincing commensurate awareness of the requirement on the matter to go before the disciplinary committee. Submission is that reference to the disciplinary committee has been done in a mechanical manner without due application of mind and this is not permitted in terms of the decisions of the Supreme Court referred to above. It is for this reason, learned Counsel for the petitioner urges that the proceedings before the disciplinary committee is one without a proper grounding and therefore cannot stand as of now. Learned Counsel submits that unless the resolution [of the Bar Council] indicates about such awareness on the part of the Bar Council and as the Council itself has not exhibited such awareness of the need or necessity to place the matter before the disciplinary committee, the reference to the disciplinary committee is in the teeth of law laid down by the Supreme Court and therefore the proceedings suffer from such infirmity and are required to be quashed.

12. Sri Sivappa had also been provided access to peruse the entire records and on such perusal, learned Counsel has also raised an additional ground, submitting that the proceedings of the scrutiny committee also appears to be flawed, as though the scrutiny committee comprised of three members, the report appears to be signed only by one of the members of the committee and therefore may not reflect the view of the committee itself and this is an additional infirmity in the proceedings.

13. Sri Ashok R. Kalyanashetty, learned Counsel for the respondents 1 and 2, on the other hand, submits that the matter has unnecessarily been got blocked down; that it is a fact that the Bar Council has not pursued the matter with the

degree of diligence and seriousness that was required; that as the file had been misplaced, the matter had lost attention and when once the file had been located, the matter had been pursued, but there is no infirmity in the procedure followed; that the matter has gone through all stages that are required in law, it had been placed before the scrutiny committee earlier, report had been given by the scrutiny committee, thereafter the matter had received attention of the Bar Council, it had been placed before the meeting of the council and the resolution was to endorse the view expressed by the scrutiny committee and to have placed the matter before the disciplinary committee was passed; that the entire file and the record was before the Bar Council at the time of the resolution and the Bar Council having passed the resolution in the awareness of the report of the scrutiny committee, it is only after due application of mind the matter was referred to the disciplinary committee; that there is no infirmity in the procedure followed; that the resolution need not spell out all reasons, being a decision of a collective body and therefore the proceedings are in order and do not call for interference in the exercise of the extraordinary writ jurisdiction of this Court.

14. Submission of Sri Lourdu Mariyappa, learned Counsel for the third respondent-complainant is that while there are no infirmities in the procedure, it is the complainant who has been suffering all along, as the complaint had not received due attention at the hands of the Bar Council in a proper and diligent manner; that with great efforts the matter has been revived and it should be allowed to reach its logical conclusion and no interference is warranted at this stage.

15. I have given my anxious consideration to the submissions at Bar. I have also looked into the records placed before the court.

16. It is true that the reference order while does not spell out that the Bar Council has, on a detailed examination of the report of the scrutiny committee, resolved to refer the matter to the disciplinary committee, in matters of this nature where the decision is by a body and the decision making process is a collective one, there is no question of such resolutions containing all reasons for passing such a resolution. A resolution is made by the requisite number of members supporting the resolution and not by every member giving his/her reasons. A meeting of this nature, particularly, by a committee of the Bar Council, is not as though a meeting of an adjudicatory body but a body which meets for taking a decision on a policy matter or administrative matter. In such a situation, it cannot be expected that the resolution will be like a speaking order, which is sine quo non of any judicial or quasi-judicial order, It is purely an administrative decision. What is important is that the committee should be aware of the circumstances in which the resolution is being passed. The report of the scrutiny committee was very much before the Bar Council and it is with reference to that report, which in itself indicated that the matter warranted reference to the disciplinary committee, the Council has passed the resolution. This indicates that there has been proper application of mind or commensurate application on

the part of the Bar Council and a conscious decision has been taken to refer the matter to the disciplinary committee. In a resolution of this nature, it is carried out if the requisite number of members supported it and it fails if they do not support it. It is not the case of the petitioner that the requisite number of members not supported the resolution but still the resolution has been indicated as having carried. The resolution is one for referring the matter to the disciplinary committee and therefore I do not find any infirmity even on application of law as had been laid down by the Supreme Court in the two cases referred to above and relied on by the learned Counsel for the petitioner.

17. Coming to the other ground that there is infirmity even in the report of the scrutiny committee, I am unable to appreciate this submission either. The report is normally prepared on behalf of the committee by one member and it is so indicated. It does not mean that the other members of the committee are not parties to the report. If so, they could have indicated their disagreement with the report. I do not find any disagreement by any other member of the scrutiny committee. Therefore, the alternative argument also fails.

18. I do not find any need for interfering with the proceedings of the Bar Council, which is a professional body, which is required to look into complaints of the nature lodged by the third respondent and in the matter of maintaining professional standards and enforcing discipline and ethics in the profession.

19. It is of utmost importance that the standards in the profession, reputation of the profession are maintained and cannot be allowed to be belittled or marred by one or two erring members whose conduct may be required to be inquired into by the Bar Council for taking appropriate action. I do not find any reason or justification to interfere in the matter at this stage.

20. Writ petition is accordingly dismissed. Any observation or finding made in the course of this order is only for the purpose of disposal of this writ petition and cannot have any bearing on the proceedings before the disciplinary committee.