

(1995) 07 MAD CK 0085

In the Madras High Court

Case No : Writ Petition No. 7018 of 1995

J. Sudershan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-1995

Acts Referred:

Advocates Act, 1961 — Section 45
Constitution of India, 1950 — Article 226
Contempt of Courts Act, 1971 — Section 2

Citation : (1995) 2 CTC 191

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : Aparna, for S.K. Sundaram, for the Appellant; K. Venkatakrishnan, for the 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Jagadeesan, J.—The petitioner has filed the Writ Petition for the issue of a Writ of mandamus, directing the first and second respondents to cause an enquiry to the circumstances that made the third respondent to file a petition before the fourth respondent, when the matter is pending before the Supreme Court of India.

2. It is the case of the petitioner that in his enrollment form dated 11.4.1990 he has not mentioned about the pendency of certain Criminal cases, since he was not involved in any criminal case in his individual capacity. But, however, on this ground the second respondent removed the petitioner from the rolls of advocates on 12.2.1994.

3. The petitioner filed a writ petition in W.P. 10165/94 against the order of the second respondent and obtained an order of stay on 7.6.1994. Ultimately, the said order was vacated on 39.3.95 and the petitioner moved Writ Appeal in W.A.334/95 against the order of dismissing the stay petition. The writ appeal was dismissed with a direction that it is open to the petitioner more the Supreme Court for suitable relief. The petitioner has moved the Supreme Court and

therefore the impugned order dated 12.2.1994 wherein the petitioner was removed from the rolls of the Advocates has not yet become final.

4. In the meanwhile, the third respondent has lodged a complaint before the fourth respondent on 27.3.95 stating that inspite of the order of removal of the petitioner from the rolls of the Advocates, the petitioner is continuing his practice as an Advocate and therefore he should be punished u/s 45 of the Advocates Act, 1961 (hereinafter refer to as "the Act"). Till 29.3.95 the order of removing the petitioner had been stayed by this court and after the stay was vacated the petitioner had stopped practicing and as such it is not open to the third respondent by making out false grounds for invoking criminal jurisdiction. Further for preventing the practice of the petitioner illegally the petitioner has filed contempt application against the third respondent and the same is pending. The fourth respondent has already filed a report before the Supreme Court of India in S.L.P.11 and 112 of 1994 with regard to the activities of the Legal Aid Cell and Legal Services Center, which is run by the petitioner, that organisation has become defunct. Hence the present writ petition has been filed for a direction, directing the first and second respondents to hold an enquiry with regard to the cause of the complaint given by the third respondent.

5. The petitioner has moved a miscellaneous petition for interim injunction for bearing the fourth respondent from taking cognizance of the complaint given by the third respondent.

6. Mrs. Aparna representing the counsel appearing for the petitioner contended that since the matter is pending before the Supreme Court, it is not open to the third respondent to take any action against the petitioner in respect of his practice as a lawyer. Further she contended that after the interim stay has been vacated in W.P. No. 10165/94 the petitioner had stopped practicing and hence there is no need for any complaint. When such is the state of affairs, the petitioner is not known as to on what basis the third respondent has given a complaint to the fourth respondent.

7. Mr. K. Venkatakrishnan, took notice on behalf of the third respondent and contended that the statement made by the petitioner's counsel that the matter is pending before the Supreme Court is totally false and the matter was already over in the Supreme Court and the order of the Bar Council of India removing the petition from the rolls of Advocates had been confirmed by the Supreme Court and inspite of the order, under the guise of the Legal Aid Cell and Legal Services Center, the petitioner is in active practice as a Lawyer. Hence the complaint has been given by the third respondent to take suitable action against the petitioner u/s 45 of the Advocates Act. Moreover, the first and second respondents are not legally bound to hold any enquiry with regard to the circumstances that made the third respondent to file the complaint before the fourth respondent. When a criminal complaint was given to the fourth respondent, he is the competent authority to hold an enquiry after registering the case and take suitable action. The first and second respondents cannot

interfere in the investigation of the fourth respondent, though they are superior authorities. Hence the writ petition is not maintainable. Further he has contended that on an earlier occasion W.P. 7237 and 7238 of 1995 were filed, raising similar issues. Those writ petitions were dismissed by this Court on 17.5.95. When those writ petitions were pending, the present writ petitions has been filed on 8.5.95. the action of the petitioner is nothing but vexatious and virtually he is trying to avoid any prosecution action that would be taken against him by the fourth respondent on the basis of the complaint given by the third respondent, any action of the petitioner to stall the investigation cannot be entertained. Further in W.P.No. 17145/93 this court has made an observation that it is open to the respondent 3,4, 10 and 11 therein (Secretary Bar Counsel, Tamil Nadu, Madras), Secretary, Bar Council of India, Secretary, Madras High Court Advocates' Association and Secretary, Bar Association, Madras) to file complaint against the respondents 1 and 2 therein (Legal Aid Cell and Legal Services Center) and all other persons connected with respondents 1 and 2 therein before the appropriate authorities for taking suitable action under the criminal law and the respondents 8 and 9 therein (Director General of Police, Madras and Commissioner of Police, Madras) were directed to proceed further with the investigation of the matters which were said to be already pending, complete the investigation and initiate proceedings of necessary with in a period of two months from 26.4.95 and in that the Bar Council had already given a complaint to the Commissioner of Police and the Commissioner of Police is directed to take appropriate action on the said complaint and complete investigation there on within two weeks from 26.4.1995. This order was passed on 26.4.95 by a Division Bench of this court. Now the relief sought for in the present writ petition is only to give a go-by to the order of the Division Bench in W.P. 17145/93 as well as the order of the single Judge in W.P. Nos. 7237 and 7238 of 1995.

8. I considered the claim of the petitioner as well as the arguments of the learned counsel for the third respondent. As the outset, it may be said that the petitioner has no legal right for the relief sought for in this writ petition. It is not open to the petitioner to request the first and second respondents to cause an enquiry to the circumstances that made the third respondent to file a petition before the fourth respondent when the matter is pending before the Supreme Court of India. When it is pointed out by the learned counsel for the third respondent that no matter is pending before the Supreme Court, the learned counsel for the petitioner represented that she has not been given proper instructions. She further said that had the respondents counsel informed her that no matter is pending before the Supreme Court, she could have persuaded her client the petitioner, to withdraw the writ petition. When the petitioner has filed the writ petition seeking for the relief that the first and second respondents should be directed to cause an enquiry to the circumstances that made the third respondent to file a petition before the fourth respondent and the matter is pending before the fourth respondent and the matter is pending before the Supreme Court, he has clearly made the statement with full knowledge about the

dismissal of his petitions by the open court and the petitioner is a party to the proceedings and having posted himself as a practicing advocate, he should be aware as to whether the appeal filed by him before the Supreme Court is pending or not. It is not for the respondents' counsel to inform the petitioner's counsel as to the stage of the case before the Supreme Court in Order to enable the petitioner to take a decision with regard to further action in the matter.

9. Further the petitioner himself has made it clear in the affidavit that he has removed from the rolls of the Advocates and he has challenged the order in the writ petition and initially interim stay was granted and thereafter the stay was vacated. The petitioner has moved the writ appeal against the order of vacating the stay and that was also dismissed and inspite of vacating the stay, the petitioner was practicing as an Advocate and hence the third respondent. When the affidavit itself reveals the reason for the third respondent to give a complaint before the fourth respondent, there is absolutely no necessity for this court to direct the first and second respondents to cause an enquiry with regard to the circumstances under which the complaint has been given by the third respondent.

10. The petitioner is attempting to stall the direction issued by a Division Bench of this Court in W.P. No. 17145/93 dated 26.4.95 as well as the order of the single Judge in W.P. 7237 and 7238 of 1995 dated 17.5.1995.

Virtually the action of the petitioner would amount to contempt of court. Instead of initiating any contempt proceedings. I am of the view that the vexatious writ petition filed by the petitioner can be dismissed with exemplary costs to the third respondent, there is absolutely no merit in the writ petition and hence the same is dismissed with cost of Rs. 5,000/-. The petitioner is directed to pay the cost within one week from today.