
(1975) 03 CAL CK 0020
In the Calcutta High Court

N. Dutta Majumdar

APPELLANT

Vs

Anil Kumar Bose

RESPONDENT

Date of Decision : 20-03-1975

Acts Referred:

Advocates Act, 1961 — Section 3, 33, 34, 35, 36
Constitution of India, 1950 — Article 227, 228
Contempt of Courts Act, 1971 — Section 10, 3
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (1975) 1 CALLT 490 : (1975) CriLJ 1595 : 79 CWN 684 : (1975) 1 ILR (Cal) 458

Hon'ble Judges : N.C. Talukdar, J;A.N. Banerjee, J

Bench : Division Bench

Judgement

A.N. Banerjee, J.—On a reference made to this Court by the Chairman Disciplinary Committee No. 3 of the Bar Council of West Bengal, a Rule directing the. contemner respondent to show cause as to why he will not be committed to prison or suitably dealt with under the Contempt of Courts Act, 1971 for having committed contempt of the subordinate court viz. disciplinary committee of the Bar Council, was issued. It appears that the aforesaid Disciplinary Committee by a majority order dated 13-2-74 suspended Jagadish Chandra Consul, an advocate from practice for a period of five years with costs. On 23-2-74, the contemner/ respondent Anil Kumar Bose who was a Bench clerk in the first court of the Commissioner for Workmen's Compensation, West Bengal, Calcutta, and who had retired from service on 1-1-72 wrote a letter to the Registrar/Secretary, Bar Council of West Bengal. In that letter he stated that he had come to know about the suspension order of Sri J.C. Consul on 22-2-74 in connection with the incident which took place on 16-12-67. Claiming to be an eye-witness he wrote, "It is unthinkable of Sri Consul and this news pained me a lot because it has brought about injustice to Sri Consul who is really a very well behaved and sober Advocate. In fact, he is one of the best few well-behaved lawyers of this Court. I have been seeing him charging the fees from his clients in the Court room No. 1 in the evenings during 1968 to 1971 when all his clients going satisfied and

respects to him... Later on I came to know that there was hand of some Advocates in the incident who wanted to harass Sri J. C. Consul, Advocate but due to his goodness he has been put to face this undue, and uncalled for situation...Under the circumstances I volunteer myself for, stating the truth before the Disciplinary Committee if so required and request you Sir to reconsider the matter to save Sri Consul from the injustice caused to him". Thereafter, the Chairman of the Disciplinary Committee No. 3 made a reference to this Court u/s 10 of the Contempt of Courts Act, 1971 for dealing with the matter. The contemner/respondent appeared and has shown cause, by filing an affidavit-in-opposition. There is also an affidavit-in-reply sworn by the Secretary of the Bar Council of West Bengal.

2. Mr. Amal Kumar Roy, learned advocate appearing for the contemner/respondent raised three points viz. (1) the Disciplinary Committee of Bar Council of West Bengal was not a court, (2) if a court, it was not a court subordinate to High Court so as to attract the provision of the Contempt of Courts Act, 1971, and (3) the conduct of the Contemner/respondent in writing the impugned letter to Bar Council of West Bengal was a bona fide one and was not contumacious in nature.

3. Mr. Ranjit Kumar Ghosh, learned advocate with Mrs. Rama Bhattacharya appearing for Bar Council of West Bengal submitted that having regard to the provisions of the Advocates Act, 1961, it could not tout be said that the Disciplinary Committee of Bar Council of West Bengal was a court subordinate to High Court within the meaning of the provisions as contained in the Contempt of Courts Act, 1971. Mr. Ghosh further submitted that the conduct of the contemner/respondent was contumacious in nature inasmuch as by such private communication to Bar Council he attempted to influence it to change its order otherwise than in accordance with law and as such amounted to an attempt to divert or interfere with or obstruct the course of justice and due administration of the law.

4. Mr. Surathi Mohan Sanyal, learned advocate appearing for the State supported the contention of Mr. Ghosh.

5. We are therefore, required to see first whether the Disciplinary Committee of Bar Council of West Bengal can be said to be a court. In order to appreciate whether the Disciplinary Committee in suspending Mr. Consul from practice for a period of five years, was functioning as a court, it is necessary to examine certain provisions of the Advocates Act, 1961. The Advocates Act, 1961 is an Act to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Each State has a Bar Council of its own. Every Bar Council u/s 5 of the aforesaid Act which will hereafter referred to as the Act shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract and may by the name by which it is known sue and be. sued. Section 6 deals with the functions of a State Bar

Council. u/s 9 of the Act, a Bar Council shall constitute one or more disciplinary committee each of which shall consist of three persons of whom two shall be persons elected by the Council from among its members and the other shall be a person co-opted by the Council from among advocates who possess the qualifications specified in the proviso to Sub-section (2) of Section 3 and who are not members of the Council, and the seniormost advocate among the members of a disciplinary committee shall be the Chairman thereof. u/s 33 except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court, or before any authority or person unless he is enrolled as an advocate under this Act. Section 34(1) lays down that the High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. It is u/s 35 of the Act "Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee of a State Bar Council if it does not summarily reject the complaint, shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State. The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, viz.:

- (a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;
- (b) reprimand the advocate;
- (c) suspend the advocate from practice for such period as it may deem fit;
- (d) remove the name of the advocate from the State roll of advocates.

Where any notice is issued to the Advocate-General under Sub-section (2), the Advocate-General may appear before the disciplinary committee or committee of the State Bar Council either in person or through any advocate appearing on his behalf.

6. An Advocate who is suspended from practice u/s 35 of the Act shall during the period of suspension be debarred from practice in any court or before any person or authority in India.

7. u/s 37 of the Act person aggrieved by an order of the disciplinary committee of a State Bar Council made (under Section 35) may, within sixty days of the date of the communication of the order to him, prefer an appeal to the Bar Council of India. Every such appeal shall be heard by the disciplinary committee of the Bar Council of India which may pass such order thereon as it deems fit. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India u/s 36 or Section 37 may, within sixty days of the date on which

the order is communicated to him, prefer an appeal to the. Supreme Court and the Supreme Court may pass such order thereon as it deems fit, (vide Section 38 of the Act). The provisions of Sections 5 and 12 of the Indian Limitation Act, 1908 shall so far as may be, apply to appeals u/s 37 and Section 38.

8. Section 42 of the Act lays down the powers of Disciplinary Committee. It is as follows:

42 (1) The disciplinary committee of a Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring discovery and production of any documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) any other matter which may be prescribed:

Provided that no such disciplinary committee shall have the right to require the attendance of-

- (a) any presiding officer of a court except with the previous sanction of the High Court to which such court is subordinate;
- (b) any officer of a revenue court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, and every such disciplinary committee shall be deemed to be a civil court for the purposes of Sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

(3) For the purposes of exercising any of the powers conferred by Sub-section (1), disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and the civil court shall cause such process to be served or such commission to be issued, as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

9. The Disciplinary Committee of a Bar Council has the power u/s 43 of the Act to pass such order as to the costs of any proceedings before it as it may deem fit any such order shall be executable as if it were an order:

(a) in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court;

(b) in the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

The disciplinary committee of a Bar Council may of its own motion or otherwise review any order passed by it under the Chapter V, of the Act subject to the approval by the Bar Council of India.

10. These are some of the relevant provisions of the Act which for our present purpose would go to indicate that the Disciplinary Committee of a Bar Council has not merely the trappings of a court but has also the requisite attributes of a court.

11. In the case of *Brajnandan Sinha Vs. Jyoti Narain*, , in which the question was, whether a Commissioner appointed under the Public Servants (Inquiries) Act, 1850 was a Court within the meaning of the Contempt of Courts Act, 1952, it was observed that "It is clear, therefore, that in order to constitute a Court in the strict sense of the terms, an essential condition is that the Court should have, apart from having some of the trappings of a judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement." Reference may also be made to the case of *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, in which the Supreme Court observed as follows:

It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

12. In the case of *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, , the Supreme Court was dealing with the question whether an Assistant Registrar discharging the functions of a Registrar u/s 48 read with Section 6 (2) of Bihar and Orissa Co-operative Societies Act was a court within the meaning of the Contempt of Courts Act, 1952. Their Lordships referred to the aforesaid judgments of the Supreme Court and also other judgment and held that the adjudication of the Assistant Registrar was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a Court and the powers of an ordinary civil court of the land.

13. We respectfully agree with the test laid down by the Supreme Court in the aforesaid decisions and applying the same test we find on a reference to the relevant provisions of the Act that the Disciplinary Committee of a Bar Council is a Court. We may now come to the next question whether it can be said to be a court subordinate to the High Court so as to attract the provisions of the Contempt of Courts Act, 1971.

14. Mr. Amal Kumar Roy, learned advocate contended for the contemner/respondent that since the High Court could not withdraw any case pending before the Disciplinary Committee in accordance with Article 228 of the Constitution, it cannot be said that the Disciplinary Committee was a court subordinate to the High Court

15. We are unable to agree with such contention. In this connection we may once again refer to the abovementioned case of Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, as decided by the Supreme Court. There also the question arose whether the Assistant Registrar under Bihar & Orissa Co-operative Societies Act was a Court subordinate to the High Court Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . In that case the foundation of the contention of the learned Counsel for the appellant was provided by the difference in the wording of Articles 227 and 228 of the Constitution. Under Article 227 every High Court shall have superintendence over all courts and tribunals throughout territories in relation to which it exercises jurisdiction. It was laid down in Jugal Kishore's case that under Article 227 of the Constitution, the High Court exercises judicial control over all courts and tribunals functioning within the limits of its territorial jurisdiction and this should be the test in deciding the question whether a court is subordinate to the High Court. It was observed,

In our opinion, Article 228 of the Constitution does not indicate that unless a High Court can withdraw a case to itself from another Court for disposing of a substantial question of law as to the interpretation of the Constitution, the latter court is not subordinate to the High Court. This Article is only intended to confer jurisdiction and power to the High Court to withdraw a case for the purpose mentioned above from the ordinary Courts of law whose decision may, in the normal course of things, be taken up to the High Court by way of an appeal. Article 227 is of wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of Courts functioning directly under it under the CPC and Criminal Procedure Code but it gives the High Court power to correct errors of various kinds of all Courts and tribunals in appropriate cases. Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Article 227 although the High Court could not, under the powers conferred by this Article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the tribunal. In our view, the subordination for the purpose of Section 3 of the Contempt of Courts Act means judicial subordination and not subordination

under the hierarchy of Courts under the CPC or the Criminal Procedure Code.

In our view, the above principle should also apply to the provisions of Contempt of Courts Act 1971 in so far as it refers to the Court's subordinate to High Court and as such it must be held that the Disciplinary Committee is a Court subordinate to the High Court within the meaning of the Contempt of Courts Act 1971. This brings us to the last question whether the contemner/respondent has committed contempt of the subordinate court in the manner as indicated above. We have no manner of doubt that the manner in which the letter was written to Bar Council of West Bengal calling in question the final order of the Disciplinary Committee, was not merely unwarranted but also amounted to Contempt of Court. We would have thought of taking action against the contemner/respondent had we not been satisfied with the facts that the contemner/respondent who was a Bench clerk in the court of the Commissioner for Workmen's Compensation, believed bona fide that he might be of some service to the aggrieved advocate and had we also not been satisfied with the bona fides of the unqualified apology tendered by him and on his behalf by his advocate.

16. In the result we accept the apology and discharge the Rule. The affidavits filed in Court be kept on the record.

N.C. Talukdar, J.

17. I agree.