
(2005) 05 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 3004 of 1997

S. Medhi

APPELLANT

Vs

Bar Council of Assam and Others

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Advocates Act, 1961 — Section 35, 35(1), 49(1)
Constitution of India, 1950 — Article 226

Citation : (2005) 3 GLT 483

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : D.K. Mishra, for the Appellant; D.P. Chaliha and S.S. Dey, for the Respondent

Judgement

I.A. Ansari, J.—In a series of money appeals filed by the Assam State Co-operative Marketing and Consumer Federation Ltd., the learned Single Judge of the High Court, while admitting the appeals on 19.06.96, made certain observations, which have serious bearing on, and are of immense importance in, this writ petition. For the sake of brevity, the relevant portions of the observations are quoted herein below:

It has become my painful duty to refer the matter to the Bar Council for appropriate action against the person found guilty. The facts in this case show a very deplorable state of affairs. The Appellant herein is Assam State Co-operative Marketing and Consumer Federation Ltd. The Appellant in order to file suits gave different amounts to the Lawyer and the amount was received by the Lawyers but putting signature on the documents which have been produced before me as well be evident from Annexure A and B respectively. But it is seen that the deficit court fee was not paid for a period of 6-8 years and ultimately when these suits were transferred to the Railway Claims Tribunal at Guwahati Bench from the Civil Court, all these suits were dismissed for non-payment of deficit Court Fees.... All these amount of Court fee were paid to the Lawyer in the panel. The Lawyer

involved in all the cases is Shri S. Medhi, Advocate in the panel of STATEFED at Guwahati. The money/court fee was also received by some of his juniors by putting their signatures. It is difficult to find out the name of the advocate from the signatures put therein, but some names are-one A.C. Sharma, Advocate, and A.C. Bharali and also A. Chakravorty, all perhaps juniors to Shri S. Medhi.

Prima facie it appears to be a gross dereliction of duty. Accordingly Bar Council may take appropriate action. I have referred the matter to the Bar Council inasmuch as if I do not do it, that will mean closing my eyes to the illegalities which I cannot do.

2. Acting upon the observations made in the order, dated 19.06.96, aforementioned, Respondent herein, namely, the Bar Council of Assam, Meghalaya, Manipur, Tripura, Nagaland, Mizoram and Arunachal Pradesh, (In short, "the Bar Council") issued a notice, dated 29.05.1997, addressed to the writ Petitioner. The relevant portions of this notice run as follows:

I am directed to enclose herewith a copy of the order dated 19.06.96 passed by the Hon"ble High Court making allegations against you regarding non-deposit of Court fees in the case mentioned in the order.

You are hereby asked to show cause within 20th June, 1997, why disciplinary proceedings should not be drawn up against you.

3. Challenging the legality and correctness of the observations made by the learned Single Judge in his order, dated 19.06.96, aforementioned, and also terming the notice, dated 29.05.97, issued by the Bar Council as illegal and impermissible, the Petitioner has approached this Court, with the help of the present application made under Article 226 of the Constitution of India, to get, inter alia, the remarks made in the order, dated 19.06.1996, aforementioned expunged and the notice, dated 29.05.1997, aforementioned set aside and quashed.

4. I have heard Mr. D.K. Mishra, learned Senior counsel, assisted by Mr. S. Baruah, learned Counsel, for the Petitioner, and Mr. D.P. Chaliha, learned Senior counsel, assisted by Mrs. J. Rajkumari, learned Counsel, for the Respondent No. 1. None has appeared on behalf of the remaining Respondents. I have also heard Mr. S.S. Dey, learned Counsel, who has assisted this Court as an amicus curiae.

5. To be fair enough to the Petitioner, it may be pointed out, at the very outset, that though the Petitioner had sought for directions from this Court expunging the remarks made against him in the order, dated 19.06.96, aforementioned, this prayer has not been pursued and Mr. D.K. Mishra, learned Senior counsel appearing on behalf of the Petitioner, candidly submits that the Petitioner, in this writ petition, seek relief only against the notice, dated 29.05.97, aforementioned, which the Bar Council has issued to the writ Petitioner.

6. I am, therefore, required to confine myself to the legality or otherwise of the notice, dated 29.05.97, and necessarily, therefore, I shall avoid any reference to,

or discussion of, the observations made in the order, dated 19.06.96, aforementioned except where reference to, or discussion of, the observations made in the order, dated 19.06.96, aforementioned becomes wholly indispensable for effective disposal of the writ petition.

7. Turning to the notice, dated 29.05.97, aforementioned, what is imperative to note is that the power of the Bar Council to take disciplinary action against an advocate for any professional or other misconduct is traceable to Chapter V of the Advocates Act, 1961, and it is Section 35 of the said Act, which, admittedly, lays down the power of the Bar Council to proceed against an advocate on the ground of professional or other misconduct. Section 35 reads as follows:

35. Punishment of advocates for misconduct- (1) 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.

1(A). The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

8. A careful reading of Sub-section (1) of Section 35 clearly reveals that the Bar Council can refer a case to its disciplinary committee for disposal against accusations of professional or other misconduct levelled against an advocate only when it has reason to believe, either on receipt of a complaint or otherwise, that the advocate concerned has been guilty of professional or other misconduct. "Reason to believe" is an expression, which is commonly used in statutes. The expression "reason to believe", occurring in Section 35(1), conveys that only when the Bar Council is induced by the reasons furnished to it to believe that the advocate concerned has been guilty of professional or other misconduct that it can refer the case to its disciplinary committee. The expression "reason to believe" does not mean that the Bar Council shall believe the reasons; what it means is that the Bar Council's belief must be based on reasons or induced by reasons. Even a cursory reading of Sub-section (1) of Section 35 clearly shows that a mere suspicion that an advocate is involved in professional or other misconduct does not empower the Bar Council to take disciplinary action against the advocate. The Bar Council can proceed against an advocate only when it has reasons to believe that the advocate is guilty of professional or other misconduct. The reasons to believe in the guilt of the advocate cannot be equated with the reasons to suspect the integrity or otherwise of an advocate.

9. The expression "reason to believe" is not akin to "reasons to suspect" and, therefore, a higher test has to be fulfilled; but it is not necessary for the authority concerned to reach that "belief" by a process akin to a judicial process.

10. Since the "belief" has to be that of the authority concerned, the sufficiency of the "reason" for formation of the "belief" is not for the Court to judge; but it is

open to an advocate to show that there, in fact, existed no "belief" or that the "belief" was not at all a bona fide one or that the "belief" was based on vague, irrelevant or non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Bar Council and examine whether there was any material available on record to form the requisite "belief" and, further, whether the materials has a rational connection or live link with the formation of "belief".

11. The words "has reason to believe" are stronger than the words "is satisfied". The "belief" entertained by the authority must not be arbitrary and irrational. The "belief" must be "reasonable" or, in other words, it must be based on reasons, which are relevant and material. The "belief must be held in good faith and it cannot be a mere a pretence. It is open to the court to examine whether the reasons for the belief have a rational connection or a relevant bearing on the formation of belief and whether the reasons for the "belief" are extraneous or irrelevant. The expression "reason to believe" predicates that the authority holds the "belief" induced by the existence of reasons for such belief.

12. The expression "reason to believe" is made of two components namely, "reason" and "to believe". The word "reason" means cause or justification and the word "belief" means to accept as true or to have faith in it. Before the Bar Council attributes faith or accepts the fact to exist, there must be a justification for it. The "belief" may not be open to scrutiny, for, "belief" is the final conclusion arrived at by the Bar Council concerned as a result of the mental exercise undertaken by the persons concerned on the basis of the materials received by them; but the "reason" due to which the decision is reached can always be examined. "Belief" maybe subjective, but "reason" is objective. The "belief" of the Bar Council should not be a product of imagination or speculation. There must be "reason" to induce the "belief". The "belief" must be of an honest, prudent and reasonable person and the same must be based on reasonable grounds. The Bar Council may act upon direct or indirect material; but its "belief" must not be based on mere suspicion, gossip or rumour. The expression "reason to believe" is essentially a check against frivolous complaints and a safeguard not only against initiation of disciplinary proceeding based on conjecture and surmises, but also against initiation of proceedings, which are devoid of materials or are mala fide or are based on extraneous considerations or prompted by ulterior motives.

13. Though the role of the Bar Council of States needs hardly any comments or elaborate elucidation, yet the scheme of the Advocates Act clearly indicates that one of the principal purposes for existence of State Bar Councils is to ensure that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. Though the Bar Councils have the power to entertain cases of misconduct against advocates, it also has the corresponding duty to safeguard the rights, privileges and interest of the advocates. One of the principal functions of the Bar Councils with regard to standards of professional

conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct, it shall not deter from proceeding further; rather, it shall, in such a case, refer the complaint to its disciplinary committee. Apart from the fact that the Bar Council of a State can act on a complaint if it has "reason to believe", it may also, on its own motion, refer the case for disposal to its disciplinary committee if it has reason to believe that the advocate concerned has been guilty of professional or other misconduct. In fact, if, on its own motion, the Bar Council has reason to believe that an advocate has been guilty of professional or other misconduct, it has the statutory obligation to refer such a case to its disciplinary committee. It is, thus, clear that a State Bar Council not only receives a complaint, but is also required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar council of a State acts on that reasoned belief. Considered thus, it is apparent that the Bar Council plays a very significant role in first receiving the complaint, second, in forming reasonable belief of guilt of professional or other misconduct of the advocate and, third, in imposing penalty on the advocate proceeded against.

14. Since the Bar Council exercises such vast powers as indicated hereinabove, it shall, ordinarily, act with great circumspection, for, grater the power, more careful shall be its exercise, particularly, because any hasty step, on the part of the Bar Council, may ruin the career and reputation of an advocate irreparably. At the same time, a luke-warm or no response in a deserving case may play havoc not only with a profession as noble as the profession of the advocates is, but may also shake the people's confidence in the justice delivery system itself and cause thereby immeasurable damage to the entire system of administration of justice. Necessary, therefore, it is that if the Bar Council has materials, which can make any prudent person believe that an advocate has been guilty of professional or other misconduct, it shall refer the cause to its disciplinary committee.

15. Bearing in mind what role the Bar Council plays in maintaining the standard of the professional conduct and etiquette of the advocates, when I turn to the case at hand, what attract my attention, most prominently, is that in the case at hand, the Bar Council has, admittedly, not referred the matter to their disciplinary committee. In fact, the notice, dated 29.05.97, impugned in this writ petition, was issued before the matter was referred to the disciplinary committee. Logical, therefore, it is to conclude that the Bar Council had, until the time it issued the impugned notice, no reason to believe that the Petitioner had been guilty of professional or other misconduct. In other words, since the Bar Council has chosen not to refer the matter to the disciplinary committee and given, instead a notice to the Petitioner, it is apparent that until the time the notice was issued, the Bar Council had no reason to believe that the Petitioner was guilty of professional or other misconduct. In fact, Mr. D.P. Chaliha, learned Senior counsel, appearing on behalf of the Bar Council, candidly agrees that the

Bar Council did not, at the time, when the notice was issued, have reason to believe that the Petitioner was guilty of misconduct.

16. The question, therefore, is as to whether the Bar Council, without having any reason to believe that the Petitioner was guilty of professional or other misconduct, could have issued a notice of showing cause to the Petitioner. This question brings us to the more fundamental question and the question is this: Does the Bar Council have the power to give notice to show cause to an advocate before referring the matter for disciplinary action to the disciplinary committee? The answer to this question is not very far to seek, for, between the stage, when a complaint is received by the Bar Council, and the stage, when the Bar Council refers the complaint to its disciplinary committee, the Bar Council can, as correctly pointed out by Mr. S.S. Dey, learned Amicus curiae, take action on the complaint in such manner as has been prescribed under Chapter 1 of Part VII of the Bar Council of India Rules.

17. Paragraph 2, contained in Part VII of Chapter 1 of the Bar Council of India Rules, framed under the mandate of Section 49(1)(f) of the Advocates Act, provides as follows:

2. Before referring a complaint u/s 35(1) of the Act to one of its Disciplinary Committees to be specified by it, the Bar Council may require a complaint to furnish within a time to be fixed by it, further better particulars and may also call for the comments from the advocates complained against.

18. Paragraph 2, quoted above, clearly shows that u/s 35 of the Advocates Act, the Bar Council may, before referring a complaint to the disciplinary committee, call for comments from the advocate against whom the complaint has been received. This, in turn, clearly shows that what, at best, the Bar Council can do when a complaint is received is to call for the comments from the advocate against whom the complaint has been made and it is, thereafter, that the Bar Council may, if it has reason to believe that the advocate concerned has been guilty of professional or other misconduct, refer the matter to its disciplinary committee. Even paragraph 2 aforementioned does not perceive of giving of a notice to show cause to the advocate concerned. The notice to show cause, in the present case, indicates existence of prima facie satisfaction of the Bar Council that the advocate, proceeded against, has been guilty of misconduct.

19. In the case at hand, the Bar Council, instead of asking for comments of the Petitioner, has chosen to give him a notice directing him to show cause as to why the disciplinary proceeding should not be drawn against him. The notice, so issued, indicates prima facie satisfaction of the Bar Council that a case for drawing disciplinary proceeding against the Petitioner has been made out on the basis of the observations made in the order, dated 19.06.96, aforementioned. Apart from the fact that Section 35 read with the Rules aforementioned do not empower the Bar Council to issue such a notice, it is also imperative, in the facts and circumstances of the present case, that this Court, now, determines if the

materials for inducing prima facie belief can be said to have existed at the time, when the Bar Council issued the notice, dated 29.05.97, aforementioned.

20. While considering the above aspect of the matter, it is pertinent to note that the observations made in the order, dated 19.06.96, aforementioned give no indication at all that any money, in the form of Court-fees, was received or obtained by the Petitioner. What, at the most, the observations aforementioned indicate is that some advocates, who have been working as juniors to the Petitioner, had received money for the purpose of obtaining Court-fees, but had not paid the Court fees in the appeals, which had been filed. As a matter of fact, the observations made by the Court did not even indicate that the person, who had received the money in the form of Court-fees, were really advocates acting as juniors to the present writ Petitioner, for, the observations are to the effect that all the advocates, who received the money, were, perhaps, juniors to the Petitioner.

21. In view of what have been discussed and pointed out above, it is abundantly clear that on the strength of the observations made by the Court in its order, dated 19.06.96, it cannot be said that there was any material whatsoever laid before the Bar Council enabling them to give the notice to show cause to the Petitioner. This apart, I have already pointed out hereinabove that the power to issue such a notice is not perceived by Section 35.

22. What, thus, crystallizes from the discussions held above is that the materials on record do not justify giving of any show cause notice to the Petitioner in the manner as has been done in the present case nor is there any power available with the Bar Council to issue such a notice.

23. Because of what have been concluded above, this writ petition is partly allowed and the impugned notice, dated 29.05.96, is hereby set aside and quashed. The Bar Council is, however given the liberty to call for comments from the Petitioner in accordance with the provisions of paragraph 2 aforementioned if it so decides.

24. With the above observations and directions, this writ petition shall stand disposed of.

25. No order as to costs.