
(2013) 11 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1051 of 2013

Sanjay Kumar Modi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 4 BBCJ 595

Hon'ble Judges : Navaniti Prasad Singh, J.

Bench : Single Bench

Advocate : Mr Rajendra Prasad, Sr. Advocate with M/s Pramod Kumar, Sanjay Kumar Ghosarvey, Advocates, for the Petitioner; M/s Shantanu Kumar and Gyan Prakash Ojha, Advocates, for the State Bar Council; Mr Rajesh Kumar Mishra, AC to AAG VII, for the State

Final Decision : Disposed Off

Judgement

Navaniti Prasad Singh, J.—The petitioner, being a Member of the Bhagalpur District Bar Association, was elected as General Secretary of the said Association. He had filed this writ petition challenging the Resolution No 192 of 2012 as passed by the General Body of the Bihar State Bar Council in its meeting held on 02.09.2012 (Annexure 6 to the writ petition). By the said Resolution, the State Bar Council resolved to suspend the petitioner from the post of General Secretary of the said Association and passed consequential order that the senior most joint Secretary would function in his place. By subsequent application, challenge is to the Resolution of the State Bar Council in its Executive Committee meeting being Resolution No 44 of 2013 taken on 21.04.2013 (Annexure 11) by which the State Bar Council has resolved to suspend all office bearers of the Bhagalpur Advocates Association and replaced it by an Ad hoc Committee till fresh elections are held and a new Committee for the District Association is elected.

2. The challenge firstly is that the State Bar Council has no such jurisdiction to suspend any office bearer of any Association or suspend all office bearers of the

Association. It is then argued that there are no materials to justify such a drastic action especially in view of the fact that the petitioner and other office bearers are democratically elected office bearers.

3. State Bar Council has appeared, filed counter affidavit and with consent of parties, this writ petition has been heard for its final disposal at this stage itself.

4. Before proceeding with the judgment, I want to make certain observation with regard to power of this Court. This Court is not sitting in appeal over actions of statutory authorities. It is exercising right of judicial review. What is to be seen is the error in the judicial process and not the judgment itself. Thus, the scope for interference by this Court has to be viewed in that limited sense.

5. Coming to the question of jurisdiction, learned counsel for the State Bar Association refers to Rule 32B of the Model Rules for the State Bar Council. There is no dispute amongst the parties that this Rule would be applicable towards the scope and ambit of this Rule that would decide the validity of the stand of either side. Rule 32B reads thus:-

"32B. The General Body of Association will have power to remove any office-bearer from the post on ground of financial irregularity and/or proved misconduct subject to approval of the Bar Council. In case of financial irregularity or misappropriation, the Bar Council will take suo motu action against the concerned office-bearer."

6. From the Rule aforesaid, it would be seen that if any office bearer of an Association is found to be guilty of financial irregularity or misconduct then the Association can remove him subject to approval of the State Bar Council. This is an independent power given to the Association with power of superintendence to the State Bar Council. In addition to and not in derogation to the aforesaid power is the power of the State Bar Council to take suo motu action against the concerned office bearer. Here, the expression suo motu is of some significance. Suo motu means on its own, without being formally moved. Thus, whether anyone informs the Bar Council or not, whether Bar Council gathers information from any source or not, if conditions are appropriate, it has the jurisdiction to remove an office bearer. From this, another question arises whether if they have power to move an office bearer? Whether they have power to suspend an office bearer?

7. On behalf of petitioner, it is submitted that they lack the power to suspend. In my view, the contention is misconceived. If suspension is by way of punishment then certainly the power has to be conferred by Statute or any force having force of Statute but if power of suspension is being exercised as an interim measure then such power is power ancillary to the exercise of main power and must inhale in all such authorities otherwise the substantive power itself would become meaningless. To illustrate, without being exhaustive, if there are allegations of grave financial irregularities being committed by an office bearer then if he is asked to show cause and allowed to continue, severe damages may be

committed having serious consequences. Ultimately, if the office bearer is removed, he would have ruined the situation beyond redemption and, as such, to overcome such a situation, as an interim measure and not by way of punishment, such ancillary power inhales to an authority. It is in aid of substantive power of removal. Thus, it cannot be said that the Bar Council has no power to suspend in view of Rule 32B.

8. Thus seen, the allegations in the present case, being based upon communication by the President of the Association to the State Bar Council of financial irregularities and having appreciated that as would be evident from impugned Annexure 6, the General Body of the State Bar Council resolved to suspend the petitioner and asked him to show cause. Such an action cannot be said to be without jurisdiction, illegal or arbitrary in any manner.

9. Now we come to the final order. The Executive Committee, while finally deciding the matter which decision was taken by the impugned Annexure 11, took into consideration the serious situation that had arisen in the District Bar Association where one officer was fighting with another leading to criminal cases and locking up of offices affecting the work of the Association. Taking note of this grave situation, which is not denied by the petitioner, they took a decision to suspend the entire office bearers awaiting fresh elections. The question is whether this could be done or not? The answer is again in the affirmative. If because by virtue of Rule 32B, the Bar Council has the authority and the jurisdiction to suspend and/or remove an office bearer, it goes without saying that it could remove every office bearer. It need not pass individual orders against each office bearer. Thus, the power to suspend or remove the entire office bearers being there, the next question arises does it have the authority to appoint an Ad hoc Committee? In my view, the answer is simple. The Bar Council of India Act clearly provides that there shall be Association of Advocates at all levels. Advocates are to be Member of one or the other Association. Thus, the law predicates an Association. Can we have an Association without any office bearer? Office bearers are nothing but elected body from amongst the Members to manage the affairs of the Association. If the Association is to be a continuous Body then necessarily there has to be a Management Committee. If the office bearers are suspended then necessary it flows that some arrangement, Ad hoc it may be, has to be made ensuring that there is a transition maintained till a newly elected Body is put in place. There cannot be a vacuum. There has to be continuity. Thus, this power is also contained within Rule 32B as a power ancillary to the exercise of the main power.

10. The last submission of learned counsel for the petitioner is that there were no facts justifying the drastic action taken. In my view, this Court, exercising powers of judicial review as noted above, is not sitting as an appellate Court. It is only to see the decision making process and not the validity of the decision itself. It has been held by the Apex Court in the cases of Barium Chemicals Limited and Another v. Company Law Board and Others since reported in AIR

1967 Supreme Court 295 and Rohtas Industries v. S.D. Agarwal and Others since reported in 1969 (1) Supreme Court Cases 325 that it is not open to the Court to see whether sufficient materials are there or not. What the Court has to see whether there are materials or not. Whether they are sufficient or not is a question which has to be determined by the authorities themselves and that decision cannot be substituted by the Court.

11. Thus seen, if we see the letter of the President of the Association to the State Bar Council, there are serious allegations of financial irregularity and impropriety being committed. Whether they are sufficient or not is not a question open to judicial review. Thus, in my view, the action of the State Bar Council either under impugned Annexure 6 or under impugned Annexure 11 cannot be questioned.

12. In fairness to learned counsel for the petitioner, I must notice that there is yet another challenge in respect to Annexure 15 which is the decision of the Executive Committee of the District Bar Association whereby the petitioner's name has been struck off from the list of Members of the Association. Firstly, I have my serious doubts whether the Association by itself has any such authority. Secondly, such a drastic action cannot be taken without notice to a party affected because under the Bar Council of India Act, an Advocate, as noted above, has to be a Member of an Association. Striking the name of a Member out of the list of the Association virtually deprives him of the right to carry on his profession. Such a drastic power cannot be exercised in such a casual manner. Lastly, as noticed above, by the decision of the Executive Committee of the State Bar Council, the District Bar Association office bearers were removed and the Body was replaced by an Ad hoc Committee as far back as in May/June, 2013. Annexure 15 has been issued in July, 2013 and, accordingly, has to be the decision of the Ad hoc Committee. It is not a Committee that had powers delegated to it by virtue of being elected office bearers. Such a drastic power could not be exercised by an Ad hoc Committee.

13. Thus, in my view, Annexure 15 cannot be sustained. It is, accordingly, set aside.

14. Thus, the writ petition, in so far as against the actions of the State Bar Council fails but, so far as against the order expelling the petitioner from the Association, succeeds.

15. The writ petition, thus, stands disposed of.