
(1964) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh

Sat Pal Sehgal

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 10-01-1964

Acts Referred:

Advocates Act, 1961 — Section 50

Citation : AIR 1964 P&H 415 : (1964) CriLJ 448 : (1964) 1 ILR (P&H) 825

Hon'ble Judges : Shamsheer Bahadur, J;J.S. Bedi, J;I.D. Dua, J

Bench : Full Bench

Judgement

Shamsheer Bahadur, J.—The only question which remains to be settled is whether this Court in the exercise of disciplinary jurisdiction under the Indian Bar Councils Act can still proceed with the complaint which has been pending for some time against Shri Sat Pal Sehgal, Advocate of Patiala, in view of the enforcement of Chapter V of the Advocates Act, 1961 with effect from 1st September, 1963?

The proceedings against the Advocate were initiated on a complaint by Joginder Singh received in this Court on 26th April, 1960. The matter was referred to the local Bar Council which was of the opinion that an inquiry should be held against the Advocate u/s 10(2) of the Indian Bar Councils Act. The inquiry was entrusted to the District Judge Patiala, who submitted his report on 18th February, 1961. The report came for consideration before a Full Bench on 6th August, 1962 and it was found that the District Judge had not made complete inquiry into the matter and had contented himself by obtaining an explanation from the Advocate alone without calling upon the complainant to make good his case. The inquiry was therefore sent back to the District Judge by order of the Full Bench passed on 6th August, 1962. The District Judge has now gone into the matter again after holding full inquiry and in the report submitted by him on 7th May, 1963, he has expressed the view that the charge of professional misconduct levelled against the Advocate has not been established.

2. When the second report of the District Judge was placed for disposal before the same Full Bench on 17th December, 1963, Chapter V of the Advocates Act,

1961, dealing with disciplinary matters had come into force with edict from 1st September, 1963, and it superseded corresponding provisions of the Indian Bar Councils Act, 1926. This chapter of the Advocates Act deals with the conduct of Advocates and has created a machinery for dealing with such matters and the High Court does not come into picture at all.

3. The Advocates (Removal of Difficulties) Order, 1963 came into force with effect from 1st September, 1963, and under Sub-clause (b) of Clause (2) "appointed day" means the date on which Chapter V of the Advocates Act comes into force. Under Sub-clause (1) of Clause 3 it is stated that--

As from the appointed day, every proceedings in respect of any disciplinary matter in relation to an existing advocate of a High Court shall save as provided in Sub-clause (2) be disposed of by the State Bar Council in relation to that High Court, as if the existing Advocate has been enrolled as an advocate on its roll.

Sub-clause (2) of Clause 3 deals with pending proceedings and we have to see whether the proceedings against Shri Sat Pal Sehgal can still be entertained by this Court. Sub-clause (2) with its two provisos may well be reproduced:-

(2) if immediately before the appointed day, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926 (38 of 1926) such proceeding shall stand transferred to the State Bar Council in relation to that High Court as it were a proceeding pending before the corresponding Be Council under Clause (c) of Sub-Section (1) of Section 56 of the Act:

Provided that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted u/s 11 of the Indian Bar Councils Act 1926, the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all the powers conferred on it u/s 12 of the said Act, as if that Section has not been repealed by the Act:

Provided further that where the High Court has referred back any case for further inquiry under Sub-Section (4) of Section 12 of the said Act the proceeding shall stand transferred to the State Bar Council in relation to that High Court, as if were a proceeding pending before the corresponding Bar Council under Clause (c) of Sub-Section (1) of Section 56 of the Act.)

4. The first proviso is not applicable to this case as the finding of the District Judge does not constitute the finding of a Tribunal as contemplated u/s 11 of the Indian Bar Councils Act, 1926. Sub-Section(1) of Section 11 of the Indian Bar Councils Act says that --

Where any case is referred for inquiry to the Bar Council u/s 10 the case shall be inquired into by a Committee of the Bar Council (hereinafter referred to as the Tribunal).

The inquiry in the present instance having been made by the District Judge who

is not a Tribunal under the Indian Bar Councils Act, the High Court therefore cannot dispose of the case under the first proviso. The report of the District Judge is clearly covered by the second proviso under which the proceedings even at this stage have to be transferred to the State Bar Council.

5. The same conclusion must be reached on a perusal of Section 50 of the Advocates Act, 1961, which deals with "repeal of certain enactments. Sub-Section (4) says that "on the date on which Chapter V comes into force" the following shall stand repealed namely:-

(a) X X (b) X X (c) Sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926.

(d) X X X

Now Sections 10 to 13 of the Indian Bar Councils Act, 1926, deal with "misconduct". Section 10 empowers the High Court to reprimand, suspend or remove from practice any advocate of the High Court whom it finds guilty of professional or other misconduct. Sub-Section(2) lays down two courses for the High Court to adopt when it receives a complaint. The High Court may refer the case for inquiry either to the Bar Council or after consultation with the Bar Council, to the Court of a District Judge. Section 11 to which reference has been made empowers a Tribunal appointed by the Bar Council to inquire into the matter. Section 12 deals with the procedure in respect of these inquiries and Section 13 is concerned with the powers of the Tribunal and Courts in such inquiries. All these provisions under the Indian Bar Councils Act now have been abrogated and Chapter V of the Advocates Act, 1961, is fully applicable to the present inquiry. The power of the High Court to respect of pending proceedings is preserved only limited extent as mentioned aforesaid and as the finding of the District judge is not that of a Tribunal, the proceedings will therefore, stand transferred to the State Bar Council under Sub-clause (2) of Section 3 of the Advocates (Removal of Difficulties) Order, 1963.

I.D. Dua, J.

6. I agree.

J.S. Bedi, J.

7. I agree.