

(2009) 10 AHC CK 0162

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50096 of 2009

V.C.Mishra and Another

APPELLANT

Vs

Bar council of U.P, Allahabad and Another

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Advocates Act, 1961 — Section 35

Citation : (2009) 10 AHC CK 0162

Hon'ble Judges : Amitava Lala, J and Ashok Srivastava, J

Final Decision : Disposed Of

Judgement

1. This writ petition has been made by the President, High Court Bar Association, Allahabad by appearing in person.

2. By this writ petition he wants quashing of the showcause notice dated 30.8.2009 issued by the Vice Chairman of the Bar Council of Uttar Pradesh. As per the notice the petitioner was called upon to give reply to show cause as to why a disciplinary proceeding should not be proceeded against him under Section 35 of the Advocates Act, 1961.

3. The contention of the petitioner is that the notice is unsustainable in nature since any decision has not been taken by the Bar Council of Uttar Pradesh to issue the notice but the same is an individual action on the part of the Vice Chairman of the Bar Council of Uttar Pradesh.

4. Normally the court does not interfere with the issuance of notice to show cause but when such show cause notice seems to be barred under any law, there is no embargo on the writ jurisdiction of this court with regard to interference of the notice. The petitioner has called upon to substantiate such facts on which, being prima satisfied, we have called upon Sri Pankaj Naqvi, learned counsel appearing for the Bar Council of Uttar Pradesh to take appropriate instruction and make submission before this court to which Mr. Naqvi has come forward with a communication of the Chairman of the Bar Council of Uttar Pradesh dated

29.9.2009 addressed to the Secretary of Bar Council of Uttar Pradesh from which it transpires that there was a proceeding on 20.9.2009 debarring the petitioner from acting as an advocate for 10 years but the same has been kept in abeyance. However, Mr. Pankaj Naqvi is not in a position to submit any resolution of such nature or meeting or communication excepting the communication dated 29.9.2009 and the earlier show cause dated 30.8.2009. Against this background we are surprised to the conduct of the Bar Council of Uttar Pradesh in proceeding with the matter.

5. According to the petitioner non communication of the order, if any, and keeping it in the file cannot be deemed to be an order at all. Moreover, the order is to be passed by the disciplinary authority under Section 35 of the Act not individually ? and before passing such order an opportunity should be given for placing the case. However, Mr. Naqvi has contended before this court that since by the letter dated 29.9.2009, the Chairman kept the proceeding in abeyance, therefore, non communication will not come in the way.

6. In any event we are of the view that the proceeding which wanted to be initiated or initiated was not in a proper manner. The Bar Council of Uttar Pradesh being a statutory body should be law abiding but not to act on the basis of personal animosity with any member of the Bar or for helping any office bearer of the Bar Association. Against this background we are of the view that it is open for the Bar Council to take any decision in accordance with law under Section 35 of the Advocates Act, 1961 if at all the Bar Council of Uttar Pradesh is not satisfied with any conduct of the petitioner but not to act in the manner as it has been done. It is further significant to note that if there is no recording available with regard to decision of 20.9.2009, then the authority of the Bar Council of Uttar Pradesh is also authorised to take legal action against such person who has committed such mistake. We are of the view that no body is above law and should not take law in his own hands to subserve any purpose.

7. With the above observation, we dispose of the writ petition by quashing the notice dated 30.8.2009.

8. No order is passed as to cost.

9. However, it is open to the Bar Council of Uttar Pradesh to proceed in accordance with law.

10. So far as prayer no. ii and iii (iii has been written as ii twice) are concerned, they are not pressed by the petitioner. However, it is open for the petitioner to proceed in accordance with law for such prayer in some other proceeding.

11. Copy of communication dated 29.9.2009 supplied by Sri Pankaj Naqvi, learned counsel appearing on behalf of Bar Council of Uttar Pradesh is kept on record.